

Amendment No. 3563

S. 1285

AMENDMENT NO. **3563**

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—104th Cong., 2d Sess.

S. 1285

To reauthorize and amend the Comprehensive Environmental Recovery, Compensation, and Liability Act of 1980, and for other purposes.

MARCH 21, 1996

Referred to the Committee on Environment and Public Works and ordered to be printed

AMENDMENT In the Nature of a Substitute intended to be proposed by Mr. SMITH (for himself and Mr. CHAFEE)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Accelerated Cleanup and Environmental Restoration Act
6 of 1996”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COMMUNITY PARTICIPATION

Sec. 101. Community response organizations; technical assistance grants; improvement of public participation in the Superfund decision-making process.

TITLE II—STATE ROLE

- Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

TITLE III—VOLUNTARY CLEANUP

- Sec. 301. Assistance for qualifying State voluntary response programs.
 Sec. 302. Brownfield characterization program.
 Sec. 303. Treatment of security interest holders and fiduciaries as owners or operators.
 Sec. 304. Federal Deposit Insurance Act amendment.
 Sec. 305. Contiguous properties.
 Sec. 306. Prospective purchasers and windfall liens.
 Sec. 307. Safe harbor innocent landholders.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

- Sec. 401. Definitions.
 Sec. 402. Selection and implementation of remedial actions.
 Sec. 403. Remedy selection methodology.
 Sec. 404. Remedy selection procedures.
 Sec. 405. Completion of physical construction and delisting.
 Sec. 406. Transition rules for facilities currently involved in remedy selection.
 Sec. 407. Judicial review.
 Sec. 408. National Priorities List.

TITLE V—LIABILITY

- Sec. 501. Liability exceptions and limitations.
 Sec. 502. Contribution from the Fund for certain retroactive liability.
 Sec. 503. Allocation of liability for certain facilities.
 Sec. 504. Liability of response action contractors.
 Sec. 505. Release of evidence.
 Sec. 506. Contribution protection.
 Sec. 507. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.
 Sec. 508. Common carriers.
 Sec. 509. Limitation on liability for response costs.

TITLE VI—FEDERAL FACILITIES

- Sec. 601. Transfer of authorities.
 Sec. 602. Limitation on criminal liability of Federal officers, employees, and agents.
 Sec. 603. Innovative technologies for remedial action at Federal facilities.
 Sec. 604. Federal facility listing.
 Sec. 605. Federal facility listing deferral.
 Sec. 606. Transfers of uncontaminated property.

TITLE VII—NATURAL RESOURCE DAMAGES

- Sec. 701. Restoration of natural resources.
 Sec. 702. Assessment of damages.
 Sec. 703. Consistency between response actions and resource restoration standards and alternatives.
 Sec. 704. Miscellaneous amendments.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Result-oriented cleanups.
 Sec. 802. National Priorities List.
 Sec. 803. Obligations from the fund for response actions.
 Sec. 804. Remediation waste.

TITLE IX—FUNDING

Subtitle A—General Provisions

- Sec. 901. Authorization of appropriations from the Fund.
 Sec. 902. Orphan share funding.
 Sec. 903. Department of Health and Human Services.
 Sec. 904. Limitations on research, development, and demonstration programs.
 Sec. 905. Authorization of appropriations from general revenues.
 Sec. 906. Additional limitations.
 Sec. 907. Reimbursement of potentially responsible parties.

TITLE I—COMMUNITY PARTICIPATION

SEC. 101. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

“(e) COMMUNITY RESPONSE ORGANIZATIONS.—

“(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

“(A) if the Administrator determines that a representative public forum will be helpful in

1 promoting direct, regular, and meaningful con-
2 sultation among persons interested in remedial
3 action at the facility; or

4 “(B) at the request of—

5 “(i) 50 individuals residing in, or at
6 least 20 percent of the population of, the
7 area in which the facility is located;

8 “(ii) a representative group of the po-
9 tentially responsible parties; or

10 “(iii) any local governmental entity
11 with jurisdiction over the facility.

12 “(2) RESPONSIBILITIES.—A community re-
13 sponse organization shall—

14 “(A) solicit the views of the local commu-
15 nity on various issues affecting the development
16 and implementation of remedial actions at the
17 facility;

18 “(B) serve as a conduit of information to
19 and from the community to appropriate Fed-
20 eral, State, and local agencies and potentially
21 responsible parties;

22 “(C) serve as a representative of the local
23 community during the remedial action planning
24 and implementation process; and

1 “(D) provide reasonable notice of and op-
2 portunities to participate in the meetings and
3 other activities of the community response orga-
4 nization.

5 “(3) ACCESS TO DOCUMENTS.—The Adminis-
6 trator shall provide a community response organiza-
7 tion access to documents in possession of the Fed-
8 eral Government regarding response actions at the
9 facility that do not relate to liability and are not
10 protected from disclosure as confidential business in-
11 formation.

12 “(4) COMMUNITY RESPONSE ORGANIZATION
13 INPUT.—

14 “(A) CONSULTATION.—The Administrator
15 (or if the remedial action plan is being prepared
16 or implemented by a party other than the Ad-
17 ministrator, the other party) shall—

18 “(i) consult with the community re-
19 sponse organization in developing and im-
20 plementing the remedial action plan; and

21 “(ii) keep the community response or-
22 ganization informed of progress in the de-
23 velopment and implementation of the re-
24 medial action plan.

1 “(B) TIMELY SUBMISSION OF COM-
 2 MENTS.—The community response organization
 3 shall provide its comments, information, and
 4 recommendations in a timely manner to the Ad-
 5 ministrator (and other party).

6 “(C) CONSENSUS.—The community re-
 7 sponse organization shall attempt to achieve
 8 consensus among its members before providing
 9 comments and recommendations to the Admin-
 10 istrator (and other party), but if consensus can-
 11 not be reached, the community response organi-
 12 zation shall report or allow presentation of di-
 13 vergent views.

14 “(5) TECHNICAL ASSISTANCE GRANTS.—

15 “(A) PREFERRED RECIPIENT.—If a com-
 16 munity response organization exists for a facil-
 17 ity, the community response organization shall
 18 be the preferred recipient of a technical assist-
 19 ance grant under subsection (f).

20 “(B) PRIOR AWARD.—If a technical assist-
 21 ance grant concerning a facility has been
 22 awarded prior to establishment of a community
 23 response organization—

24 “(i) the recipient of the grant shall co-
 25 ordinate its activities and share informa-

tion and technical expertise with the community response organization; and

“(ii) 1 person representing the grant recipient shall serve on the community response organization.

“(6) MEMBERSHIP.—

“(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

“(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

“(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

“(i) Persons who reside or own residential property near the facility.

“(ii) Persons who, although they may not reside or own property near the facil-

1 ity, may be adversely affected by a release
2 from the facility.

3 “(iii) Persons who are members of the
4 local public health or medical community
5 and are practicing in the community.

6 “(iv) Representatives of Indian tribes
7 or Indian communities that reside or own
8 property near the facility or that may be
9 adversely affected by a release from the fa-
10 cility.

11 “(v) Local representatives of citizen,
12 environmental, or public interest groups
13 with members residing in the community.

14 “(vi) Representatives of local govern-
15 ments, such as city or county governments,
16 or both, and any other governmental unit
17 that regulates land use or land use plan-
18 ning in the vicinity of the facility.

19 “(vii) Members of the local business
20 community.

21 “(D) PROPORTION.—Local residents shall
22 comprise not less than 60 percent of the mem-
23 bership of a community response organization.

24 “(E) PAY.—Members of a community re-
25 sponse organization shall serve without pay.

1 “(7) PARTICIPATION BY GOVERNMENT REP-
2 RESENTATIVES.—Representatives of the Adminis-
3 trator, the Administrator of the Agency for Toxic
4 Substances and Disease Registry, other Federal
5 agencies, and the State, as appropriate, shall partici-
6 pate in community response organization meetings
7 to provide information and technical expertise, but
8 shall not be members of the community response or-
9 ganization.

10 “(8) ADMINISTRATIVE SUPPORT.—The Admin-
11 istrator shall provide administrative services and
12 meeting facilities for community response organiza-
13 tions.

14 “(9) FACA.—The Federal Advisory Committee
15 Act (5 U.S.C. App.) shall not apply to a community
16 response organization.

17 “(f) TECHNICAL ASSISTANCE GRANTS.—

18 “(1) DEFINITIONS.—In this subsection:

19 “(A) AFFECTED CITIZEN GROUP.—The
20 term ‘affected citizen group’ means a group of
21 2 or more individuals who may be affected by
22 the release or threatened release of a hazardous
23 substance, pollutant, or contaminant at any fa-
24 cility on the State Registry or the National Pri-
25 orities List.

1 “(B) TECHNICAL ASSISTANCE GRANT.—

2 The term ‘technical assistance grant’ means a
3 grant made under paragraph (2).

4 “(2) AUTHORITY.—

5 “(A) IN GENERAL.—In accordance with a
6 regulation issued by the Administrator, the Ad-
7 ministrator may make grants available to af-
8 fected citizen groups.

9 “(B) AVAILABILITY OF APPLICATION
10 PROCESS.—To ensure that the application proc-
11 ess for a technical assistance grant is available
12 to all affected citizen groups, the Administrator
13 shall periodically review the process and, based
14 on the review, implement appropriate changes
15 to improve availability.

16 “(3) SPECIAL RULES.—

17 “(A) NO MATCHING CONTRIBUTION.—No
18 matching contribution shall be required for a
19 technical assistance grant.

20 “(B) AVAILABILITY IN ADVANCE.—The
21 Administrator shall make all or a portion (but
22 not less than \$5,000 or 10 percent of the grant
23 amount, whichever is greater) of the grant
24 amount available to a grant recipient in ad-

1 vance of the total expenditures to be covered by
2 the grant.

3 “(4) LIMIT PER FACILITY.—

4 “(A) 1 GRANT PER FACILITY.—Not more
5 than 1 technical assistance grant may be made
6 with respect to a single facility, but the grant
7 may be renewed to facilitate public participation
8 at all stages of response action.

9 “(B) DURATION.—The Administrator shall
10 set a limit by regulation on the number of years
11 for which a technical assistance grant may be
12 made available based on the duration, type, and
13 extent of response action at a facility.

14 “(5) AVAILABILITY FOR FACILITIES NOT YET
15 LISTED.—Subject to paragraph (6), 1 or more tech-
16 nical assistance grants shall be made available to af-
17 fected citizen groups in communities containing fa-
18 cilities on the State Registry as of the date on which
19 the grant is awarded.

20 “(6) FUNDING LIMIT.—

21 “(A) PERCENTAGE OF TOTAL APPROPRIA-
22 TIONS.—Not more than 2 percent of the funds
23 made available to carry out this Act for a fiscal
24 year may be used to make technical assistance
25 grants.

1 “(B) ALLOCATION BETWEEN LISTED AND
2 UNLISTED FACILITIES.—Not more than the
3 portion of funds equal to $\frac{1}{8}$ of the total amount
4 of funds used to make technical assistance
5 grants for a fiscal year may be used for tech-
6 nical assistance grants with respect to facilities
7 not listed on the National Priorities List.

8 “(7) FUNDING AMOUNT.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the amount of a technical
11 assistance grant may not exceed \$50,000 for a
12 single grant recipient.

13 “(B) INCREASE.—The Administrator may
14 increase the amount of a technical assistance
15 grant, or renew a previous technical assistance
16 grant, up to a total grant amount not exceeding
17 \$100,000, to reflect the complexity of the re-
18 sponse action, the nature and extent of con-
19 tamination at the facility, the level of facility
20 activity, projected total needs as requested by
21 the grant recipient, the size and diversity of the
22 affected population, and the ability of the grant
23 recipient to identify and raise funds from other
24 non-Federal sources.

1 “(8) USE OF TECHNICAL ASSISTANCE
2 GRANTS.—

3 “(A) PERMITTED USE.—A technical assist-
4 ance grant may be used to obtain technical as-
5 sistance in interpreting information with regard
6 to—

7 “(i) the nature of the hazardous sub-
8 stances located at a facility;

9 “(ii) the work plan;

10 “(iii) the facility evaluation;

11 “(iv) a proposed remedial action plan,
12 a remedial action plan, and a final reme-
13 dial design for a facility;

14 “(v) response actions carried out at
15 the facility; and

16 “(vi) operation and maintenance ac-
17 tivities at the facility.

18 “(B) PROHIBITED USE.—A technical as-
19 sistance grant may not be used for the purpose
20 of collecting field sampling data.

21 “(9) GRANT GUIDELINES.—

22 “(A) IN GENERAL.—Not later than 90
23 days after the date of enactment of this para-
24 graph, the Administrator shall develop and pub-

1 lish guidelines concerning the management of
2 technical assistance grants by grant recipients.

3 “(B) HIRING OF EXPERTS.—A recipient of
4 a technical assistance grant that hires technical
5 experts and other experts shall act in accord-
6 ance with the guidelines under subparagraph
7 (A).

8 “(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN
9 THE SUPERFUND DECISIONMAKING PROCESS.—

10 “(1) IN GENERAL.—

11 “(A) MEETINGS AND NOTICE.—In order to
12 provide an opportunity for meaningful public
13 participation in every significant phase of re-
14 sponse activities under this Act, the Adminis-
15 trator shall provide the opportunity for, and
16 publish notice of, public meetings before or dur-
17 ing performance of—

18 “(i) a facility evaluation, as appro-
19 priate;

20 “(ii) announcement of a proposed re-
21 medial action plan; and

22 “(iii) completion of a final remedial
23 design.

24 “(B) INFORMATION.—A public meeting
25 under subparagraph (A) shall be designed to

1 obtain information from the community, and
2 disseminate information to the community, with
3 respect to a facility concerning the Administra-
4 tor's facility activities and pending decisions.

5 “(2) PARTICIPANTS AND SUBJECT.—The Ad-
6 ministrator shall provide reasonable notice of an op-
7 portunity for public participation in meetings in
8 which—

9 “(A) the participants include Federal offi-
10 cials (or State officials, if the State is conduct-
11 ing response actions under a delegated or au-
12 thorized program or through facility referral)
13 with authority to make significant decisions af-
14 fecting a response action, and other persons
15 (unless all of such other persons are
16 coregulators that are not potentially responsible
17 parties or are government contractors); and

18 “(B) the subject of the meeting involves
19 discussions directly affecting—

20 “(i) a legally enforceable work plan
21 document, or any significant amendment
22 to the document, for a removal, facility
23 evaluation, proposed remedial action plan,
24 final remedial design, or remedial action

1 for a facility on the National Priorities
2 List; or

3 “(ii) the final record of information on
4 which the Administrator will base a hazard
5 ranking system score for a facility.

6 “(3) LIMITATION.—Nothing in this subsection
7 shall be construed—

8 “(A) to provide for public participation in
9 or otherwise affect any negotiation, meeting, or
10 other discussion that concerns only the poten-
11 tial liability or settlement of potential liability
12 of any person, whether prior to or following the
13 commencement of litigation or administrative
14 enforcement action;

15 “(B) to provide for public participation in
16 or otherwise affect any negotiation, meeting, or
17 other discussion that is attended only by rep-
18 resentatives of the United States (or of a de-
19 partment, agency, or instrumentality of the
20 United States) with attorneys representing the
21 United States (or of a department, agency, or
22 instrumentality of the United States); or

23 “(C) to waive, compromise, or affect any
24 privilege that may be applicable to a commu-

1 nication related to an activity described in sub-
2 paragraph (A) or (B).

3 “(4) EVALUATION.—

4 “(A) IN GENERAL.—To the extent prac-
5 ticable, before and during the facility evalua-
6 tion, the Administrator shall solicit and evalu-
7 ate concerns, interests, and information from
8 the community.

9 “(B) PROCEDURE.—An evaluation under
10 subparagraph (A) shall include, as appro-
11 priate—

12 “(i) face-to-face community surveys to
13 identify the location of private drinking
14 water wells, historic and current or poten-
15 tial use of water, and other environmental
16 resources in the community;

17 “(ii) a public meeting;

18 “(iii) written responses to significant
19 concerns; and

20 “(iv) other appropriate participatory
21 activities.

22 “(5) VIEWS AND PREFERENCES.—

23 “(A) SOLICITATION.—During the facility
24 evaluation, the Administrator (or other person
25 performing the facility evaluation) shall solicit

1 the views and preferences of the community on
2 the remediation and disposition of hazardous
3 substances or pollutants or contaminants at the
4 facility.

5 “(B) CONSIDERATION.—The views and
6 preferences of the community shall be described
7 in the facility evaluation and considered in the
8 screening of remedial alternatives for the facil-
9 ity.

10 “(6) ALTERNATIVES.—Members of the commu-
11 nity may propose remedial action alternatives, and
12 the Administrator shall consider such alternatives in
13 the same manner as the Administrator considers al-
14 ternatives proposed by potentially responsible par-
15 ties.

16 “(7) INFORMATION.—

17 “(A) THE COMMUNITY.—The Adminis-
18 trator, with the assistance of the community re-
19 sponse organization under subsection (g) if
20 there is one, shall provide information to the
21 community and seek comment from the commu-
22 nity throughout all significant phases of the re-
23 sponse action at the facility.

24 “(B) TECHNICAL STAFF.—The Adminis-
25 trator shall ensure that information gathered

1 from the community during community out-
2 reach efforts reaches appropriate technical staff
3 in a timely and effective manner.

4 “(C) RESPONSES.—The Administrator
5 shall ensure that reasonable written or other
6 appropriate responses will be made to such in-
7 formation.

8 “(8) NONPRIVILEGED INFORMATION.—
9 Throughout all phases of response action at a facil-
10 ity, the Administrator shall make all nonprivileged
11 information relating to a facility available to the
12 public for inspection and copying without the need
13 to file a formal request, subject to reasonable service
14 charges as appropriate.

15 “(9) PRESENTATION.—

16 “(A) DOCUMENTS.—

17 “(i) IN GENERAL.—The Adminis-
18 trator, in carrying out responsibilities
19 under this Act, shall ensure that the pres-
20 entation of information on risk is complete
21 and informative.

22 “(ii) RISK.—To the extent feasible,
23 documents prepared by the Administrator
24 and made available to the public that pur-

port to describe the degree of risk to human health shall, at a minimum, state—

“(I) the distribution of risk, including upperbound and lowerbound estimates of the incremental risk;

“(II) the population or populations addressed by any estimates of the risk;

“(III) the expected risk or central estimate of the risk for the specific population;

“(IV) the reasonable range or other description of uncertainties in the assessment process; and

“(V) the assumptions that form the basis for any estimates of such risk posed by the facility and a brief explanation of the assumptions.

“(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered by the

1 general public through other sources of expo-
2 sure.

3 “(10) REQUIREMENTS.—

4 “(A) LENGTHY REMOVAL ACTIONS.—Not-
5 withstanding any other provision of this sub-
6 section, in the case of a removal action taken
7 in accordance with section 104 that is expected
8 to require more than 180 days to complete, and
9 in any case in which implementation of a re-
10 moval action is expected to obviate or that in
11 fact obviates the need to conduct a long-term
12 remedial action—

13 “(i) the Administrator shall, to the
14 maximum extent practicable, allow for pub-
15 lic participation consistent with paragraph
16 (1); and

17 “(ii) the removal action shall achieve
18 the goals of protecting human health and
19 the environment in accordance with section
20 121(a)(1).

21 “(B) OTHER REMOVAL ACTIONS.—In the
22 case of all other removal actions, the Adminis-
23 trator may provide the community with notice
24 of the anticipated removal action and a public
25 comment period, as appropriate.”.

1 (b) ISSUANCE OF GUIDELINES.—The Administrator
 2 of the Environmental Protection Agency shall issue guide-
 3 lines under section 117(e)(9) of the Comprehensive Envi-
 4 ronmental Response, Compensation, and Liability Act of
 5 1980, as added by subsection (a), not later than 90 days
 6 after the date of enactment of this Act.

7 **TITLE II—STATE ROLE**

8 **SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES** 9 **WITH RESPECT TO NATIONAL PRIORITIES** 10 **LIST FACILITIES.**

11 (a) IN GENERAL.—Title I of the Comprehensive En-
 12 vironmental Response, Compensation, and Liability Act of
 13 1980 (42 U.S.C. 9601 et seq.), as amended by section
 14 302, is amended by adding at the end the following:

15 **“SEC. 135. DELEGATION TO THE STATES OF AUTHORITIES** 16 **WITH RESPECT TO NATIONAL PRIORITIES** 17 **LIST FACILITIES.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) COMPREHENSIVE DELEGATION STATE.—
 20 The term ‘comprehensive delegation State’, with re-
 21 spect to a facility, means a State to which the Ad-
 22 ministrator has delegated authority to perform all of
 23 the categories of delegable authority.

24 “(2) DELEGABLE AUTHORITY.—The term ‘dele-
 25 gable authority’ means authority to perform (or en-

1 sure performance of) all of the authorities included
2 in any 1 or more of the categories of authority:

3 “(A) CATEGORY A.—All authorities nec-
4 essary to perform technical investigations, eval-
5 uations, and risk analyses, including—

6 “(i) a preliminary assessment or facil-
7 ity evaluation under section 104;

8 “(ii) facility characterization under
9 section 104;

10 “(iii) a remedial investigation under
11 section 104;

12 “(iv) a facility-specific risk evaluation
13 under section 129(b)(4); and

14 “(v) any other authority identified by
15 the Administrator under subsection (b).

16 “(B) CATEGORY B.—All authorities nec-
17 essary to perform alternatives development and
18 remedy selection, including—

19 “(i) a feasibility study under section
20 104; and

21 “(ii)(I) remedial action selection
22 under section 121 (including issuance of a
23 record of decision); or

24 “(II) remedial action planning under
25 section 129(b)(5); and

1 “(iii) any other authority identified by
2 the Administrator under subsection (b).

3 “(C) CATEGORY C.—All authorities nec-
4 essary to perform remedial design, including—

5 “(i) remedial design under section
6 121; and

7 “(ii) any other authority identified by
8 the Administrator under subsection (b).

9 “(D) CATEGORY D.—All authorities nec-
10 essary to perform remedial action and operation
11 and maintenance, including—

12 “(i) a removal under section 104;

13 “(ii) a remedial action under section
14 104 or section 10 (a) or (b);

15 “(iii) operation and maintenance
16 under section 104(c); and

17 “(iv) any other authority identified by
18 the Administrator under subsection (b).

19 “(E) CATEGORY E.—All authorities nec-
20 essary to perform information collection and al-
21 location of liability, including—

22 “(i) information collection activity
23 under section 104(e);

24 “(ii) allocation of liability under sec-
25 tion 132;

1 “(iii) a search for potentially respon-
2 sible parties under section 104 or 107;

3 “(iv) settlement under section 122;
4 and

5 “(v) any other authority identified by
6 the Administrator under subsection (b).

7 “(F) CATEGORY F.—All authorities nec-
8 essary to perform enforcement, including—

9 “(i) issuance of an order under sec-
10 tion 106(a);

11 “(ii) a response action cost recovery
12 under section 107;

13 “(iii) imposition of a civil penalty or
14 award under section 109 (a)(1)(D) or
15 (b)(4);

16 “(iv) settlement under section 122;
17 and

18 “(v) any other authority identified by
19 the Administrator under subsection (b).

20 “(3) DELEGATED STATE.—The term ‘delegated
21 State’ means a State to which delegable authority
22 has been delegated under subsection (c), except as
23 may be provided in a delegation agreement in the
24 case of a limited delegation of authority under sub-
25 section (c)(5).

1 “(4) DELEGATED AUTHORITY.—The term ‘dele-
 2 gated authority’ means a delegable authority that
 3 has been delegated to a delegated State under this
 4 section.

5 “(5) DELEGATED FACILITY.—The term ‘dele-
 6 gated facility’ means a non-Federal listed facility
 7 with respect to which a delegable authority has been
 8 delegated to a State under this section.

9 “(6) NONCOMPREHENSIVE DELEGATION
 10 STATE.—The term ‘noncomprehensive delegation
 11 State’, with respect to a facility, means a State to
 12 which the Administrator has delegated authority to
 13 perform fewer than all of the categories of delegable
 14 authority.

15 “(7) NONDELEGABLE AUTHORITY.—The term
 16 ‘nondelegable authority’ means authority to—

17 “(A) make grants to community response
 18 organizations under section 117; and

19 “(B) conduct research and development ac-
 20 tivities under any provision of this Act.

21 “(8) NON-FEDERAL LISTED FACILITY.—The
 22 term ‘non-Federal listed facility’ means a facility
 23 that—

1 “(A) is not owned or operated by a depart-
 2 ment, agency, or instrumentality of the United
 3 States in any branch of the Government; and

4 “(B) is listed on the National Priorities
 5 List.

6 “(b) IDENTIFICATION OF DELEGABLE AUTHORI-
 7 TIES.—

8 “(1) IN GENERAL.—The President shall by reg-
 9 ulation identify all of the authorities of the Adminis-
 10 trator that shall be included in a delegation of any
 11 category of delegable authority described in sub-
 12 section (a)(2).

13 “(2) LIMITATION.—The Administrator shall not
 14 identify a nondelegable authority for inclusion in a
 15 delegation of any category of delegable authority.

16 “(c) DELEGATION OF AUTHORITY.—

17 “(1) IN GENERAL.—Pursuant to an approved
 18 State application, the Administrator shall delegate
 19 authority to perform 1 or more delegable authorities
 20 with respect to 1 or more non-Federal listed facili-
 21 ties in the State.

22 “(2) APPLICATION.—An application under
 23 paragraph (1) shall—

24 “(A) identify each non-Federal listed facil-
 25 ity for which delegation is requested;

1 “(B) identify each delegable authority that
2 is requested to be delegated for each non-Fed-
3 eral listed facility for which delegation is re-
4 quested; and

5 “(C) certify that the State, supported by
6 such documentation as the State, in consulta-
7 tion with the Administrator, considers to be ap-
8 propriate, has—

9 “(i) statutory and regulatory author-
10 ity (including appropriate enforcement au-
11 thority) to perform the requested delegable
12 authorities in a manner that is protective
13 of human health and the environment;

14 “(ii) resources in place to adequately
15 administer and enforce the authorities; and

16 “(iii) procedures to ensure public no-
17 tice and, as appropriate, opportunity for
18 comment on remedial action plans, consist-
19 ent with sections 117 and 129.

20 “(3) APPROVAL OF APPLICATION.—

21 “(A) IN GENERAL.—Not later than 60
22 days after receiving an application under para-
23 graph (2) by a State that is authorized to ad-
24 minister and enforce the corrective action re-
25 quirements of a hazardous waste program

1 under section 3006 of the Solid Waste Disposal
2 Act (42 U.S.C. 6926), and not later than 120
3 days after receiving an application from a State
4 that is not authorized to administer and enforce
5 the corrective action requirements of a hazard-
6 ous waste program under section 3006 of the
7 Solid Waste Disposal Act (42 U.S.C. 6926), un-
8 less the State agrees to a greater length of time
9 for the Administrator to make a determination,
10 the Administrator shall—

11 “(i) issue a notice of approval of the
12 application (including approval or dis-
13 approval regarding any or all of the facili-
14 ties with respect to which a delegation of
15 authority is requested or with respect to
16 any or all of the authorities that are re-
17 quested to be delegated); or

18 “(ii) if the Administrator determines
19 that the State does not have adequate legal
20 authority, financial and personnel re-
21 sources, organization, or expertise to ad-
22 minister and enforce any of the requested
23 delegable authority, issue a notice of dis-
24 approval, including an explanation of the
25 basis for the determination.

1 “(B) FAILURE TO ACT.—If the Adminis-
2 trator does not issue a notice of approval or no-
3 tice of disapproval of all or any portion of an
4 application within the applicable time period
5 under subparagraph (A), the application shall
6 be deemed to have been granted.

7 “(C) RESUBMISSION OF APPLICATION.—

8 “(i) IN GENERAL.—If the Adminis-
9 trator disapproves an application under
10 paragraph (1), the State may resubmit the
11 application at any time after receiving the
12 notice of disapproval.

13 “(ii) FAILURE TO ACT.—If the Ad-
14 ministrator does not issue a notice of ap-
15 proval or notice of disapproval of a resub-
16 mitted application within the applicable
17 time period under subparagraph (A), the
18 resubmitted application shall be deemed to
19 have been granted.

20 “(D) NO ADDITIONAL TERMS OR CONDI-
21 TIONS.—The Administrator shall not impose
22 any term or condition on the approval of an ap-
23 plication that meets the requirements stated in
24 paragraph (2) (except that any technical defi-
25 ciencies in the application be corrected).

1 “(E) JUDICIAL REVIEW.—The State (but
2 no other person) shall be entitled to judicial re-
3 view under section 113(b) of a disapproval of a
4 resubmitted application.

5 “(4) DELEGATION AGREEMENT.—On approval
6 of a delegation of authority under this section, the
7 Administrator and the delegated State shall enter
8 into a delegation agreement that identifies each cat-
9 egory of delegable authority that is delegated with
10 respect to each delegated facility.

11 “(5) LIMITED DELEGATION.—

12 “(A) IN GENERAL.—In the case of a State
13 that does not meet the requirements of para-
14 graph (2)(C) the Administrator may delegate to
15 the State limited authority to perform, ensure
16 the performance of, or supervise or otherwise
17 participate in the performance of 1 or more del-
18 egable authorities, as appropriate in view of the
19 extent to which the State has the required legal
20 authority, financial and personnel resources, or-
21 ganization, and expertise.

22 “(B) SPECIAL PROVISIONS.—In the case of
23 a limited delegation of authority to a State
24 under subparagraph (A), the Administrator
25 shall specify the extent to which the State shall

1 be considered to be a delegated State for the
2 purposes of this Act.

3 “(d) PERFORMANCE OF DELEGATED AUTHORI-
4 TIES.—

5 “(1) IN GENERAL.—A delegated State shall
6 have sole authority (except as provided in paragraph
7 (6)(B), subsection (e)(4), and subsection (g)) to per-
8 form a delegated authority with respect to a dele-
9 gated facility.

10 “(2) AGREEMENTS FOR PERFORMANCE OF DEL-
11 EGATED AUTHORITIES.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), a delegated State may enter
14 into an agreement with a political subdivision of
15 the State, an interstate body comprised of that
16 State and another delegated State or States, or
17 a combination of such subdivisions or interstate
18 bodies, providing for the performance of any
19 category of delegated authority with respect to
20 a delegated facility in the State if the parties to
21 the agreement agree in the agreement to under-
22 take response actions that are consistent with
23 this Act.

24 “(B) NO AGREEMENT WITH POTENTIALLY
25 RESPONSIBLE PARTY.—A delegated State shall

not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

“(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

“(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

“(ii) shall remain responsible for ensuring performance of the delegated authority.

“(3) COMPLIANCE WITH ACT.—

“(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

1 “(B) COMPREHENSIVE DELEGATION
2 STATES.—

3 “(i) IN GENERAL.—A comprehensive
4 delegation State shall implement applicable
5 provisions of this Act or of similar provi-
6 sions of State law in a manner comporting
7 with State policy, so long as the remedial
8 action that is selected protects human
9 health and the environment to the same
10 extent as would a remedial action selected
11 by the Administrator under section 121.

12 “(ii) COSTLIER REMEDIAL ACTION.—

13 “(I) IN GENERAL.—A delegated
14 State may select a remedial action for
15 a delegated facility that has a greater
16 response cost (including operation and
17 maintenance costs) than the response
18 cost for a remedial action that would
19 be selected by the Administrator
20 under section 121, if the State pays
21 for the difference in cost.

22 “(II) NO COST RECOVERY.—If a
23 delegated State selects a more costly
24 remedial action under subclause (I),
25 the State shall not be entitled to seek

1 cost recovery under this Act or any
2 other Federal or State law from any
3 other person for the difference in cost.

4 “(4) JUDICIAL REVIEW.—An order that is is-
5 sued under section 106 by a delegated State with re-
6 spect to a delegated facility shall be reviewable only
7 in United States district court under section 113.

8 “(5) DELISTING OF NATIONAL PRIORITIES LIST
9 FACILITIES.—

10 “(A) DELISTING.—After notice and an op-
11 portunity for public comment, a delegated State
12 may remove from the National Priorities List
13 all or part of a delegated facility—

14 “(i) if the State makes a finding that
15 no further action is needed to be taken at
16 the facility (or part of the facility) under
17 any applicable law to protect human health
18 and the environment consistent with sec-
19 tion 121(a) (1) and (2);

20 “(ii) with the concurrence of the po-
21 tentially responsible parties, if the State
22 has an enforceable agreement to perform
23 all required remedial action and operation
24 and maintenance for the facility or if the
25 cleanup will proceed at the facility under

1 section 3004 (u) or (v) of the Solid Waste
2 Disposal Act (42 U.S.C. 6924 (u), (v)); or

3 “(iii) if the State is a comprehensive
4 delegation State with respect to the facil-
5 ity.

6 “(B) EFFECT OF DELISTING.—A delisting
7 under subparagraph (A) (ii) or (iii) shall not af-
8 fect—

9 “(i) the authority or responsibility of
10 the State to complete remedial action and
11 operation and maintenance;

12 “(ii) the eligibility of the State for
13 funding under this Act;

14 “(iii) notwithstanding the limitation
15 on section 104(c)(1), the authority of the
16 Administrator to make expenditures from
17 the Fund relating to the facility; or

18 “(iv) the enforceability of any consent
19 order or decree relating to the facility.

20 “(C) NO RELISTING.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), the Administrator shall
23 not relist on the National Priorities List a
24 facility or part of a facility that has been

1 removed from the National Priorities List
2 under subparagraph (A).

3 “(ii) CLEANUP NOT COMPLETED.—
4 The Administrator may relist a facility or
5 part of a facility that has been removed
6 from the National Priorities List under
7 subparagraph (A) if cleanup is not com-
8 pleted in accordance with the enforceable
9 agreement under subparagraph (A)(ii).

10 “(6) COST RECOVERY.—

11 “(A) RECOVERY BY A DELEGATED
12 STATE.—Of the amount of any response costs
13 recovered from a responsible party by a dele-
14 gated State for a delegated facility under sec-
15 tion 107—

16 “(i) 25 percent of the amount of any
17 Federal response cost recovered with re-
18 spect to a facility, plus an amount equal to
19 the amount of response costs incurred by
20 the State with respect to the facility, may
21 be retained by the State; and

22 “(ii) the remainder shall be deposited
23 in the Hazardous Substances Superfund
24 established under subchapter A of chapter
25 98 of the Internal Revenue Code of 1986.

1 “(B) RECOVERY BY THE ADMINIS-
2 TRATOR.—

3 “(i) IN GENERAL.—The Administrator
4 may take action under section 107 to re-
5 cover response costs from a responsible
6 party for a delegated facility if—

7 “(I) the delegated State notifies
8 the Administrator in writing that the
9 delegated State does not intend to
10 pursue action for recovery of response
11 costs under section 107 against the
12 responsible party; or

13 “(II) the delegated State fails to
14 take action to recover response costs
15 within a reasonable time in light of
16 applicable statutes of limitation.

17 “(ii) NOTICE.—If the Administrator
18 proposes to commence an action for recov-
19 ery of response costs under section 107,
20 the Administrator shall give the State writ-
21 ten notice and allow the State at least 90
22 days after receipt of the notice to com-
23 mence the action.

24 “(iii) NO FURTHER ACTION.—If the
25 Administrator takes action against a po-

1 tentially responsible party under section
 2 107 relating to a release from a delegated
 3 facility, the delegated State may not take
 4 any other action for recovery of response
 5 costs relating to that release under this
 6 Act or any other Federal or State law.

7 “(e) FEDERAL RESPONSIBILITIES AND AUTHORI-
 8 TIES.—

9 “(1) REVIEW USE OF FUNDS.—

10 “(A) IN GENERAL.—The Administrator
 11 shall review the certification submitted by the
 12 Governor under subsection (f)(8) not later than
 13 120 days after the date of its submission.

14 “(B) FINDING OF USE OF FUNDS INCON-
 15 SISTENT WITH THIS ACT.—If the Administrator
 16 finds that funds were used in a manner that is
 17 inconsistent with this Act, the Administrator
 18 shall notify the Governor in writing not later
 19 than 120 days after receiving the Governor’s
 20 certification.

21 “(C) EXPLANATION.—Not later than 30
 22 days after receiving a notice under subpara-
 23 graph (B), the Governor shall—

24 “(i) explain why the Administrator’s
 25 finding is in error; or

1 “(ii) explain to the Administrator’s
 2 satisfaction how any misapplication or mis-
 3 use of funds will be corrected.

4 “(D) FAILURE TO EXPLAIN.—If the Gov-
 5 ernor fails to make an explanation under sub-
 6 paragraph (C) to the Administrator’s satisfac-
 7 tion, the Administrator may request reimburse-
 8 ment of such amount of funds as the Adminis-
 9 trator finds was misapplied or misused.

10 “(E) REPAYMENT OF FUNDS.—If the Ad-
 11 ministrator fails to obtain reimbursement from
 12 the State within a reasonable period of time,
 13 the Administrator may, after 30 days’ notice to
 14 the State, bring a civil action in United States
 15 district court to recover from the delegated
 16 State any funds that were advanced for a pur-
 17 pose or were used for a purpose or in a manner
 18 that is inconsistent with this Act.

19 “(2) WITHDRAWAL OF DELEGATION OF AU-
 20 THORITY.—

21 “(A) DELEGATED STATES.—If at any time
 22 the Administrator finds that contrary to a cer-
 23 tification made under subsection (c)(2), a dele-
 24 gated State—

1 “(i) lacks the required financial and
2 personnel resources, organization, or exper-
3 tise to administer and enforce the re-
4 quested delegated authorities;

5 “(ii) does not have adequate legal au-
6 thority to request and accept delegation; or

7 “(iii) is failing to materially carry out
8 the State’s delegated authorities,

9 the Administrator may withdraw a delegation of
10 authority with respect to a delegated facility
11 after providing notice and opportunity to cor-
12 rect deficiencies under subparagraph (D).

13 “(B) STATES WITH LIMITED DELEGATIONS
14 OF AUTHORITY.—If the Administrator finds
15 that a State to which a limited delegation of au-
16 thority was made under subsection (c)(5) has
17 materially breached the delegation agreement,
18 the Administrator may withdraw the delegation
19 after providing notice and opportunity to cor-
20 rect deficiencies under subparagraph (D).

21 “(C) NO WITHDRAWAL WITH 1 YEAR OF
22 APPROVAL.—The Administrator shall not with-
23 draw a delegation of authority within 1 year
24 after the date on which the application for dele-

1 gation is approved (including approval under
2 subsection (c)(3) (B) or (C)(ii)).

3 “(D) NOTICE AND OPPORTUNITY TO COR-
4 RECT.—If the Administrator proposes to with-
5 draw a delegation of authority for any or all
6 delegated facilities, the Administrator shall give
7 the State written notice and allow the State at
8 least 90 days after the date of receipt of the no-
9 tice to correct the deficiencies cited in the no-
10 tice.

11 “(E) FAILURE TO CORRECT.—If the Ad-
12 ministrator finds that the deficiencies have not
13 been corrected within the time specified in a no-
14 tice under subparagraph (D), the Administrator
15 may withdraw delegation of authority after pro-
16 viding public notice and opportunity for com-
17 ment.

18 “(F) JUDICIAL REVIEW.—A decision of the
19 Administrator to withdraw a delegation of au-
20 thority shall be subject to judicial review under
21 section 113(b).

22 “(3) RULE OF CONSTRUCTION.—Nothing in
23 this section shall be construed to affect the authority
24 of the Administrator under this Act to—

1 “(A) take a response action at a facility
2 listed on the National Priorities List in a State
3 to which a delegation of authority has not been
4 made under this section or at a facility not in-
5 cluded in a delegation of authority; or

6 “(B) perform a delegable authority with
7 respect to a facility that is not included among
8 the authorities delegated to a State with respect
9 to the facility.

10 “(4) EMERGENCY REMOVAL.—

11 “(A) NOTICE.—Before performing an
12 emergency removal action under section 104 at
13 a delegated facility, the Administrator shall no-
14 tify the delegated States of the Administrator’s
15 intention to perform the removal.

16 “(B) STATE ACTION.—If, after receiving a
17 notice under subparagraph (A), the delegated
18 State notifies the Administrator within 48
19 hours that the State intends to take action to
20 perform an emergency removal at the delegated
21 facility, the Administrator shall not perform the
22 emergency removal action unless the Adminis-
23 trator determines that the delegated State has
24 failed to act within a reasonable period of time
25 to perform the emergency removal.

1 “(C) IMMEDIATE AND SIGNIFICANT DAN-
 2 GER.—If the Administrator finds that an emer-
 3 gency at a delegated facility poses an immediate
 4 and significant danger to human health or the
 5 environment, the Administrator shall not be re-
 6 quired to provide notice under subparagraph
 7 (A).

8 “(5) PROHIBITED ACTIONS.—Except as pro-
 9 vided in subsections (d)(6)(B), (e)(4), and (g) or ex-
 10 cept with the concurrence of the delegated State, the
 11 President, the Administrator, and the Attorney Gen-
 12 eral shall not take any action under section 104,
 13 106, 107, 109, 121, or 122 in performance of a del-
 14 egable authority that has been delegated to a State
 15 with respect to a delegated facility.

16 “(f) FUNDING.—

17 “(1) IN GENERAL.—The Administrator shall
 18 provide grants to or enter into contracts or coopera-
 19 tive agreements with delegated States to carry out
 20 this section.

21 “(2) NO CLAIM AGAINST FUND.—Notwithstand-
 22 ing any other law, funds to be granted under this
 23 subsection shall not constitute a claim against the
 24 Fund or the United States.

1 “(3) DETERMINATION OF COSTS ON A FACIL-
2 ITY-SPECIFIC BASIS.—The Administrator shall—

3 “(A) determine—

4 “(i) the delegable authorities the costs
5 of performing which it is practicable to de-
6 termine on a facility-specific basis; and

7 “(ii) the delegable authorities the
8 costs of performing which it is not prac-
9 ticable to determine on a facility-specific
10 basis; and

11 “(B) publish a list describing the delegable
12 authorities in each category.

13 “(4) FACILITY-SPECIFIC GRANTS.—The costs
14 described in paragraph (3)(A)(i) shall be funded as
15 such costs arise with respect to each delegated facil-
16 ity.

17 “(5) NONFACILITY-SPECIFIC GRANTS.—

18 “(A) IN GENERAL.—The costs described in
19 paragraph (3)(A)(ii) shall be funded through
20 nonfacility-specific grants under this paragraph.

21 “(B) FORMULA.—The Administrator shall
22 establish a formula under which funds available
23 for nonfacility-specific grants shall be allocated
24 among the delegated States, taking into consid-
25 eration—

1 “(i) the cost of administering the dele-
2 gated authority;

3 “(ii) the number of sites for which the
4 State has been delegated authority;

5 “(iii) the types of activities for which
6 the State has been delegated authority;

7 “(iv) the number of facilities within
8 the State that are listed on the National
9 Priorities List or are delegated facilities
10 under section 127(d)(5);

11 “(v) the number of other high priority
12 facilities within the State;

13 “(vi) the need for the development of
14 the State program;

15 “(vii) the need for additional person-
16 nel;

17 “(viii) the amount of resources avail-
18 able through State programs for the clean-
19 up of contaminated sites; and

20 “(ix) the benefit to human health and
21 the environment of providing the funding.

22 “(6) PERMITTED USE OF GRANT FUNDS.—A
23 delegated State may use grant funds, in accordance
24 with this Act and the National Contingency Plan, to
25 take any action or perform any duty necessary to

1 implement the authority delegated to the State
2 under this section.

3 “(7) COST SHARE.—

4 “(A) ASSURANCE.—A delegated State to
5 which a grant is made under this subsection
6 shall provide an assurance that the State will
7 pay any amount required under section
8 104(c)(3).

9 “(B) PROHIBITED USE OF GRANT
10 FUNDS.—A delegated State to which a grant is
11 made under this subsection may not use grant
12 funds to pay any amount required under section
13 104(c)(3).

14 “(8) CERTIFICATION OF USE OF FUNDS.—

15 “(A) IN GENERAL.—Not later than 1 year
16 after the date on which a delegated State re-
17 ceives funds under this subsection, and annually
18 thereafter, the Governor of the State shall sub-
19 mit to the Administrator—

20 “(i) a certification that the State has
21 used the funds in accordance with the re-
22 quirements of this Act and the National
23 Contingency Plan; and

24 “(ii) information describing the man-
25 ner in which the State used the funds.

1 “(B) REGULATIONS.—Not later than 1
 2 year after the date of enactment of this section,
 3 the Administrator shall issue a regulation de-
 4 scribing with particularity the information that
 5 a State shall be required to provide under sub-
 6 paragraph (A)(ii).

7 “(g) COOPERATIVE AGREEMENTS.—Nothing in this
 8 section shall affect the authority of the Administrator
 9 under section 104(d)(1) to enter into a cooperative agree-
 10 ment with a State, a political subdivision of a State, or
 11 an Indian tribe to carry out actions under section 104.

12 “(h) NON-NATIONAL PRIORITIES LIST FACILI-
 13 TIES.—

14 “(1) DEFINITIONS.—In this subsection, the
 15 term ‘non-National Priorities List facility’ means a
 16 facility that is not, and never has been, listed on the
 17 National Priorities List and that is not owned or op-
 18 erated by a department, agency, or instrumentality
 19 of the United States.

20 “(2) FINALITY.—

21 “(A) IN GENERAL.—Except as provided in
 22 subparagraph (B), a determination that a re-
 23 sponse action at a non-National Priorities List
 24 facility or portion of a non-National Priorities
 25 List facility is complete under State law is

1 final, and the facility shall not be subject to
 2 further response action notwithstanding any
 3 provision of this Act or any other Federal law.

4 “(B) EXCEPTION FOR EMERGENCY REMOV-
 5 ALS.—The Administrator may conduct an
 6 emergency removal action under the authority
 7 of section 104 subject to the notice requirement
 8 of section 135(e)(4) at a non-National Prior-
 9 ities List facility.”.

10 (b) STATE COST SHARE.—Section 104(c) of the
 11 Comprehensive Environmental Response, Compensation,
 12 and Liability Act of 1980 (42 U.S.C. 9604(c)) is amend-
 13 ed—

14 (1) by striking “(c)(1) Unless” and inserting
 15 the following:

16 “(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-
 17 MENTS.—

18 “(1) CONTINUANCE OF OBLIGATIONS FROM
 19 FUND.—Unless”;

20 (2) by striking “(2) The President” and insert-
 21 ing the following:

22 “(2) CONSULTATION.—The President”; and

23 (3) by striking paragraph (3) and inserting the
 24 following:

25 “(3) STATE COST SHARE.—

1 “(A) IN GENERAL.—The Administrator
2 shall not provide any remedial action under this
3 section unless the State in which the release oc-
4 curs first enters into a contract or cooperative
5 agreement with the Administrator providing as-
6 surances deemed adequate by the Administrator
7 that the State will pay, in cash or through in-
8 kind contributions, a specified percentage of the
9 costs of the remedial action and operation and
10 maintenance costs.

11 “(B) ACTIVITIES WITH RESPECT TO
12 WHICH STATE COST SHARE IS REQUIRED.—No
13 State cost share shall be required except for re-
14 medial actions under section 104 and facilities
15 with respect to which there is an exemption
16 under section 107(r).

17 “(C) SPECIFIED PERCENTAGE.—

18 “(i) IN GENERAL.—The specified per-
19 centage of costs that a State shall be re-
20 quired to share shall be the lower of 10
21 percent or the percentage determined
22 under clause (ii).

23 “(ii) MAXIMUM IN ACCORDANCE WITH
24 LAW PRIOR TO 1996 AMENDMENTS.—

1 “(I) On petition by a State, the
2 Director of the Office of Management
3 and Budget (referred to in this clause
4 as the ‘Director’), after providing pub-
5 lic notice and opportunity for com-
6 ment, shall establish a cost share per-
7 centage, which shall be uniform for all
8 facilities in the State, at the percent-
9 age rate at which the total amount of
10 anticipated payments by the State
11 under the cost share for all facilities
12 in the State for which a cost share is
13 required most closely approximates
14 the total amount of estimated cost
15 share payments by the State for facili-
16 ties that would have been required
17 under cost share requirements that
18 were applicable prior to the date of
19 enactment of this subparagraph, ad-
20 justed to reflect the extent to which
21 the State’s ability to recover costs
22 under this Act were reduced by reason
23 of enactment of amendments to this
24 Act by the Accelerated Cleanup and

1 Environmental Restoration Act of
2 1996.

3 “(II) The Director may adjust a
4 State’s cost share under this clause
5 not more frequently than every 3
6 years.

7 “(D) INDIAN TRIBES.—In the case of re-
8 medial action to be taken on land or water held
9 by an Indian Tribe, held by the United States
10 in trust for Indians, held by a member of an In-
11 dian Tribe (if the land or water is subject to a
12 trust restriction on alienation), or otherwise
13 within the borders of an Indian reservation, the
14 requirements of this paragraph shall not
15 apply.”.

16 (c) USES OF FUND.—Section 111(a) of the Com-
17 prehensive Environmental Response, Compensation, and
18 Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by
19 inserting after paragraph (6) the following:

20 “(7) GRANTS TO DELEGATED STATES.—Making
21 a grant to a delegated State under section 135(f).”.

22 (d) RELATIONSHIP TO OTHER LAWS.—

23 (1) IN GENERAL.—Section 114(b) of the Com-
24 prehensive Environmental Response, Compensation,
25 and Liability Act of 1980 (42 U.S.C. 9614(b)) is

1 amended by striking “removal” each place it appears
 2 and inserting “response”.

3 (2) CONFORMING AMENDMENT.—Section
 4 101(37)(B) of the Comprehensive Environmental
 5 Response, Compensation, and Liability Act of 1980
 6 (42 U.S.C. 9601(37)(B)) is amended by striking
 7 “section 114(c)” and inserting “section 114(b)”.

8 **TITLE III—VOLUNTARY** 9 **CLEANUP**

10 **SEC. 301. ASSISTANCE FOR QUALIFYING STATE VOL-** 11 **UNTARY RESPONSE PROGRAMS.**

12 (a) DEFINITION.—Section 101 of the Comprehensive
 13 Environmental Response, Compensation, and Liability Act
 14 of 1980 (42 U.S.C. 9601) is amended by adding at the
 15 end the following:

16 “(39) QUALIFYING STATE VOLUNTARY RE-
 17 SPONSE PROGRAM.—The term ‘qualifying State vol-
 18 untary response program’ means a State program
 19 that includes the elements described in section
 20 133(b).”.

21 (b) QUALIFYING STATE VOLUNTARY RESPONSE PRO-
 22 GRAMS.—Title I of the Comprehensive Environmental Re-
 23 sponse, Compensation, and Liability Act of 1980 (42
 24 U.S.C. 9601 et seq.), as amended by section 501, is
 25 amended by adding at the end the following:

1 **“SEC. 133. QUALIFYING STATE VOLUNTARY RESPONSE PRO-**
2 **GRAMS.**

3 “(a) ASSISTANCE TO STATES.—The Administrator
4 shall provide technical and other assistance to States to
5 establish and expand qualifying State voluntary response
6 programs that include the elements listed in subsection
7 (b).

8 “(b) ELEMENTS.—The elements of a qualifying State
9 voluntary response program are the following:

10 “(1) Opportunities for technical assistance for
11 voluntary response actions.

12 “(2) Adequate opportunities for public partici-
13 pation, including prior notice and opportunity for
14 comment in appropriate circumstances, in selecting
15 response actions.

16 “(3) Streamlined procedures to ensure expedi-
17 tious voluntary response actions.

18 “(4) Oversight and enforcement authorities or
19 other mechanisms that are adequate to ensure
20 that—

21 “(A) voluntary response actions will pro-
22 tect human health and the environment and be
23 conducted in accordance with applicable Federal
24 and State law; and

25 “(B) if the person conducting the vol-
26 untary response action fails to complete the

1 necessary response activities, including oper-
2 ation and maintenance or long-term monitoring
3 activities, the necessary response activities are
4 completed.

5 “(5) Mechanisms for approval of a voluntary re-
6 sponse action plan.

7 “(6) A requirement for certification or similar
8 documentation from the State to the person conduct-
9 ing the voluntary response action indicating that the
10 response is complete.”.

11 (c) FUNDING.—Section 111(a) of the Comprehensive
12 Environmental Response, Compensation, and Liability Act
13 of 1980 (42 U.S.C. 9611), as amended by section 201(b),
14 is amended by inserting after paragraph (7) the following:

15 “(8) QUALIFYING STATE VOLUNTARY RE-
16 SPONSE PROGRAMS.—For assistance to States to es-
17 tablish and administer qualifying State voluntary re-
18 sponse programs, during the first 5 full fiscal years
19 following the date of enactment of this subpara-
20 graph, in a total amount to all States that is not less
21 than 2 percent and not more than 5 percent of the
22 amount available in the Fund for each such fiscal
23 year, distributed among each of the States that noti-
24 fies the Administrator of the State’s intent to estab-
25 lish a qualifying State voluntary response program

1 and each of the States with a qualifying State vol-
 2 untary response program in the amount that is
 3 equal to the total amount multiplied by a fraction—

4 “(A) the numerator of which is the number
 5 of facilities in the State that, as of September
 6 29, 1995, were listed on the Comprehensive En-
 7 vironmental Response, Compensation, and Li-
 8 ability Information System (not including facili-
 9 ties that are listed on the National Priorities
 10 List); and

11 “(B) the denominator of which is the total
 12 number of such facilities in the United States.”.

13 (d) COMPLIANCE WITH ACT.—A person that con-
 14 ducts a voluntary response action under this section at a
 15 facility that is listed or proposed for listing on the Na-
 16 tional Priorities List shall implement applicable provisions
 17 of this Act or of similar provisions of State law in a man-
 18 ner comporting with State policy, so long as the remedial
 19 action that is selected protects human health and the envi-
 20 ronment to the same extent as would a remedial action
 21 selected by the Administrator under section 121(a).

22 **SEC. 302. BROWNFIELD CHARACTERIZATION PROGRAM.**

23 Title I of the Comprehensive Environmental Re-
 24 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.), as amended by section 301(b), is
2 amended by adding at the end the following:

3 **“SEC. 134. BROWNFIELD CHARACTERIZATION PROGRAM.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) ADMINISTRATIVE COST.—The term ‘ad-
6 ministrative cost’ does not include the cost of—

7 “(A) investigation and identification of the
8 extent of contamination;

9 “(B) design and performance of a response
10 action; or

11 “(C) monitoring of natural resources.

12 “(2) BROWNFIELD FACILITY.—The term
13 ‘brownfield facility’ means—

14 “(A) a parcel of land that contains an
15 abandoned, idled, or underused commercial or
16 industrial facility, the expansion or redevelop-
17 ment of which is complicated by the presence or
18 potential presence of a hazardous substance;
19 but

20 “(B) does not include—

21 “(i) a facility that is the subject of a
22 removal or planned removal under title I;

23 “(ii) a facility that is listed or has
24 been proposed for listing on the National

1 Priorities List or that has been delisted
2 under section 135(d)(5);

3 “(iii) a facility that is subject to cor-
4 rective action under section 3004(u) or
5 3008(h) of the Solid Waste Disposal Act
6 (42 U.S.C. 6924(u) or 6928(h)) at the
7 time at which an application for a grant or
8 loan concerning the facility is submitted
9 under this section;

10 “(iv) a land disposal unit with respect
11 to which—

12 “(I) a closure notification under
13 subtitle C of the Solid Waste Disposal
14 Act (42 U.S.C. 6921 et seq.) has been
15 submitted; and

16 “(II) closure requirements have
17 been specified in a closure plan or
18 permit;

19 “(v) a facility with respect to which
20 an administrative order on consent or judi-
21 cial consent decree requiring cleanup has
22 been entered into by the United States
23 under this Act, the Solid Waste Disposal
24 Act (42 U.S.C. 6901 et seq.), the Federal
25 Water Pollution Control Act (33 U.S.C.

1 1251 et seq.), the Toxic Substances Con-
 2 trol Act (15 U.S.C. 2601 et seq.), or title
 3 XIV of the Public Health Service Act
 4 (commonly known as the ‘Safe Drinking
 5 Water Act’) (42 U.S.C. 300f et seq.);

6 “(vi) a facility that is owned or oper-
 7 ated by a department, agency, or instru-
 8 mentality of the United States; or

9 “(vii) a portion of a facility, for which
 10 portion, assistance for response activity
 11 has been obtained under subtitle I of the
 12 Solid Waste Disposal Act (42 U.S.C. 6991
 13 et seq.) from the Leaking Underground
 14 Storage Tank Trust Fund established
 15 under section 9508 of the Internal Reve-
 16 nue Code of 1986.

17 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
 18 tity’ means—

19 “(A) a general purpose unit of local gov-
 20 ernment;

21 “(B) a land clearance authority or other
 22 quasi-governmental entity that operates under
 23 the supervision and control of or as an agent of
 24 a general purpose unit of local government;

1 “(C) a regional council or group of general
2 purpose units of local government;

3 “(D) a redevelopment agency that is char-
4 tered or otherwise sanctioned by a State; and

5 “(E) an Indian tribe.

6 “(b) BROWNFIELD CHARACTERIZATION PROGRAM.—

7 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
8 ministrator shall establish a program to provide in-
9 terest-free loans for the site characterization and as-
10 sessment of brownfield facilities.

11 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
12 AND ASSESSMENT.—

13 “(A) IN GENERAL.—On approval of an ap-
14 plication made by an eligible entity, the Admin-
15 istrator may make interest-free loans out of the
16 Fund to the eligible entity to be used for the
17 site characterization and assessment of 1 or
18 more brownfield facilities.

19 “(B) APPROPRIATE INQUIRY.—A site char-
20 acterization and assessment carried out with
21 the use of a loan under subparagraph (A) shall
22 be performed in accordance with section
23 101(35)(B).

24 “(C) REPAYMENT.—

1 “(i) IN GENERAL.—An eligible entity
2 that receives a loan under subparagraph
3 (A) shall agree to repay the full amount of
4 the loan within 10 years after the date on
5 which the loan is made.

6 “(ii) DEPOSIT IN FUND.—Repayments
7 on a loan under subparagraph (A) shall be
8 deposited in the Fund.

9 “(3) HAZARDOUS SUBSTANCE SUPERFUND.—
10 Notwithstanding section 111 of this Act or any pro-
11 vision of the Superfund Amendments and Reauthor-
12 ization Act of 1986 (100 Stat. 1613), there is au-
13 thorized to be appropriated out of the Fund
14 \$15,000,000 for each of the first 5 fiscal years be-
15 ginning after the date of enactment of this section,
16 to be used for making interest-free loans under
17 paragraph (2).

18 “(4) MAXIMUM LOAN AMOUNT.—A loan under
19 subparagraph (A) shall not exceed, with respect to
20 each brownfield facility covered by the loan,
21 \$100,000 for any fiscal year or \$200,000 in total.

22 “(5) SUNSET.—No amount shall be available
23 from the Fund for purposes of this section after the
24 fifth fiscal year after the date of enactment of this
25 section.

1 “(6) PROHIBITION.—No part of a loan under
2 this section may be used for payment of penalties,
3 fines, or administrative costs.

4 “(7) AUDITS.—The Inspector General of the
5 Environmental Protection Agency shall audit all
6 loans made under paragraph (2) to ensure that all
7 funds are used for the purposes described in this
8 section and that all loans are repaid in accordance
9 with paragraph (2).

10 “(8) AGREEMENTS.—Each loan made under
11 this section shall be subject to an agreement that—

12 “(A) requires the eligible entity to comply
13 with all applicable State laws (including regula-
14 tions);

15 “(B) requires that the eligible entity shall
16 use the loan exclusively for purposes specified
17 in paragraph (2); and

18 “(C) contains such other terms and condi-
19 tions as the Administrator determines to be
20 necessary to protect the financial interests of
21 the United States and to carry out the purposes
22 of this section.

23 “(9) LEVERAGING.—An eligible entity that re-
24 ceives a loan under paragraph (1) may use the
25 loaned funds for part of a project at a brownfield fa-

1 cility for which funding is received from other
2 sources, but the loan funds shall be used only for the
3 purposes described in paragraph (2).

4 “(c) LOAN APPLICATIONS.—

5 “(1) IN GENERAL.—Any eligible entity may
6 submit an application to the Administrator, through
7 a regional office of the Environmental Protection
8 Agency and in such form as the Administrator may
9 require, for a loan under this section for 1 or more
10 brownfield facilities.

11 “(2) APPLICATION REQUIREMENTS.—An appli-
12 cation for a loan under this section shall include—

13 “(A) an identification of each brownfield
14 facility for which the loan is sought and a de-
15 scription of the redevelopment plan for the area
16 or areas in which each facility is located, includ-
17 ing a description of the nature and extent of
18 any known or suspected environmental contami-
19 nation within the area;

20 “(B) an analysis that demonstrates the po-
21 tential of the grant to stimulate economic devel-
22 opment on completion of the planned response
23 action, including a projection of the number of
24 jobs expected to be created at the facility after
25 remediation and redevelopment and, to the ex-

1 tent feasible, a description of the type and skill
2 level of the jobs and a projection of the in-
3 creases in revenues accruing to Federal, State,
4 and local governments from the jobs; and

5 “(C) information relevant to the ranking
6 criteria stated in paragraph (4).

7 “(3) APPROVAL.—

8 “(A) INITIAL LOANS.—On or about March
9 30 and September 30 of the first fiscal year fol-
10 lowing the date of enactment of this section, the
11 Administrator shall make loans under this sec-
12 tion to eligible entities that submit applications
13 before those dates that the Administrator deter-
14 mines have the highest rankings under ranking
15 criteria established under paragraph (4).

16 “(B) SUBSEQUENT LOANS.—Beginning
17 with the second fiscal year following the date of
18 enactment of this section, the Administrator
19 shall make an annual evaluation of each appli-
20 cation received during the prior fiscal year and
21 make loans under this section to eligible entities
22 that submit applications during the prior year
23 that the Administrator determines have the
24 highest rankings under the ranking criteria es-
25 tablished under paragraph (4).

1 “(4) RANKING CRITERIA.—The Administrator
2 shall establish a system for ranking loan applications
3 that includes the following criteria:

4 “(A) The extent to which a loan will stimu-
5 late the availability of other funds for environ-
6 mental remediation and subsequent redevelop-
7 ment of the area in which the brownfield facili-
8 ties are located.

9 “(B) The potential of the development plan
10 for the area in which the brownfield facilities
11 are located to stimulate economic development
12 of the area on completion of the cleanup, such
13 as the following:

14 “(i) The relative increase in the esti-
15 mated fair market value of the area as a
16 result of any necessary response action.

17 “(ii) The potential of a loan to create
18 new or expand existing business and em-
19 ployment opportunities (particularly full-
20 time employment opportunities) on comple-
21 tion of any necessary response action.

22 “(iii) The estimated additional tax
23 revenues expected to be generated by eco-
24 nomic redevelopment in the area in which
25 a brownfield facility is located.

1 “(iv) The estimated extent to which a
2 loan would facilitate the identification of or
3 facilitate a reduction of health and envi-
4 ronmental risks.

5 “(v) The financial involvement of the
6 State and local government in any re-
7 sponse action planned for a brownfield fa-
8 cility and the extent to which the response
9 action and the proposed redevelopment is
10 consistent with any applicable State or
11 local community economic development
12 plan.

13 “(vi) The extent to which the site
14 characterization and assessment or re-
15 sponse action and subsequent development
16 of a brownfield facility involves the active
17 participation and support of the local com-
18 munity.

19 “(vii) Such other factors as the Ad-
20 ministrator considers appropriate to carry
21 out the purposes of this section.”.

1 **SEC. 303. TREATMENT OF SECURITY INTEREST HOLDERS**
 2 **AND FIDUCIARIES AS OWNERS OR OPERA-**
 3 **TORS.**

4 (a) DEFINITION OF OWNER OR OPERATOR.—Section
 5 101 of the Comprehensive Environmental Response, Com-
 6 pensation, and Liability Act of 1980 (42 U.S.C. 9601),
 7 as amended by section 301(a), is amended—

8 (1) in paragraph (20)—

9 (A) in subparagraph (A) by striking the
 10 second sentence; and

11 (B) by adding at the end the following:

12 “(E) SECURITY INTEREST HOLDERS.—

13 “(i) IN GENERAL.—The term ‘owner
 14 or operator’ does not include a person that,
 15 without participating in the management
 16 of a vessel or facility, holds an indicium of
 17 ownership primarily to protect the person’s
 18 security interest in a vessel or facility.

19 “(ii) PARTICIPATING IN MANAGE-
 20 MENT.—A security interest holder—

21 “(I) shall be considered to be
 22 participating in management of a ves-
 23 sel or facility only if the security in-
 24 terest holder has undertaken—

25 “(aa) responsibility for the
 26 hazardous substance handling or

1 disposal practices of the vessel or
2 facility; or

3 “(bb) overall management of
4 the vessel or facility encompass-
5 ing day-to-day decisionmaking
6 over environmental compliance or
7 over an operational function (in-
8 cluding functions such as those
9 of a plant manager, operations
10 manager, chief operating officer,
11 or chief executive officer), as op-
12 posed to financial and adminis-
13 trative aspects, of a vessel or fa-
14 cility; and

15 “(II) shall not be considered to
16 be participating in management solely
17 on the ground that the security inter-
18 est holder—

19 “(aa) serves in a capacity or
20 has the ability to influence or the
21 right to control the operation of
22 a vessel or facility if that capac-
23 ity, ability, or right is not exer-
24 cised;

1 “(bb) acts, or causes or re-
2 quires another person to act, to
3 comply with an applicable law or
4 to respond lawfully to disposal of
5 a hazardous substance;

6 “(cc) performs an act or
7 omits to act in any way with re-
8 spect to a vessel or facility prior
9 to the time at which a security
10 interest is created in a vessel or
11 facility;

12 “(dd) holds, abandons, or
13 releases a security interest;

14 “(ee) includes in the terms
15 of an extension of credit, or in a
16 contract or security agreement
17 relating to an extension of credit,
18 a covenant, warranty, or other
19 term or condition that relates to
20 environmental compliance;

21 “(ff) monitors or enforces a
22 term or condition of an extension
23 of credit or a security interest;

1 “(gg) monitors or under-
2 takes 1 or more inspections of a
3 vessel or facility;

4 “(hh) requires or conducts a
5 response action or other lawful
6 means of addressing a release or
7 threatened release of a hazardous
8 substance in connection with a
9 vessel or facility prior to, during,
10 or on the expiration of the term
11 of an extension of credit;

12 “(ii) provides financial or
13 other advice or counseling in an
14 effort to mitigate, prevent, or
15 cure a default or diminution in
16 the value of a vessel or facility;

17 “(jj) exercises forbearance
18 by restructuring, renegotiating,
19 or otherwise agreeing to alter a
20 term or condition of an extension
21 of credit or a security interest; or

22 “(kk) exercises any remedy
23 that may be available under law
24 for the breach of a term or condi-

tion of an extension of credit or
a security agreement.

“(iii) FORECLOSURE.—Legal or equitable title acquired by a security interest holder through foreclosure (or the equivalent of foreclosure) shall be considered to be held primarily to protect a security interest if the holder undertakes to sell, release, or otherwise divest the vessel or facility in a reasonably expeditious manner on commercially reasonable terms.

“(iv) DEFINITION OF SECURITY INTEREST.—In this subparagraph, the term ‘security interest’ includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation.

“(F) FIDUCIARIES.—

“(i) IN GENERAL.—The term ‘owner or operator’ does not include a fiduciary that holds legal or equitable title to, is the mortgagee or secured party with respect

1 to, controls, or manages, directly or indi-
2 rectly, a vessel or facility for the purpose
3 of administering an estate or trust of
4 which the vessel or facility is a part.”; and

5 (2) by adding at the end the following:

6 “(40) FIDUCIARY.—The term ‘fiduciary’ means
7 a person that is acting in the capacity of—

8 “(A) an executor or administrator of an es-
9 tate, including a voluntary executor or a vol-
10 untary administrator;

11 “(B) a guardian;

12 “(C) a conservator;

13 “(D) a trustee under a will or a trust
14 agreement under which the trustee takes legal
15 or equitable title to, or otherwise controls or
16 manages, a vessel or facility for the purpose of
17 protecting or conserving the vessel or facility
18 under the rules applied in State court;

19 “(E) a court-appointed receiver;

20 “(F) a trustee appointed in proceedings
21 under title 11, United States Code;

22 “(G) an assignee or a trustee acting under
23 an assignment made for the benefit of creditors;
24 or

1 “(H) a trustee, or a successor to a trustee,
 2 under an indenture agreement, trust agreement,
 3 lease, or similar financing agreement, for debt
 4 securities, certificates of interest of participa-
 5 tion in debt securities, or other forms of indebt-
 6 edness as to which the trustee is not, in the ca-
 7 pacity of trustee, the lender.”.

8 (b) LIABILITY OF FIDUCIARIES AND LENDERS.—
 9 Section 107 of the Comprehensive Environmental Re-
 10 sponse, Compensation, and Liability Act of 1980 (42
 11 U.S.C. 9607) is amended by adding at the end the follow-
 12 ing:

13 “(n) LIABILITY OF FIDUCIARIES.—

14 “(1) IN GENERAL.—The liability of a fiduciary
 15 that is liable under any other provision of this Act
 16 for the release or threatened release of a hazardous
 17 substance from a vessel or facility held by a fidu-
 18 ciary may not exceed the assets held by the fiduciary
 19 that are available to indemnify the fiduciary.

20 “(2) NO INDIVIDUAL LIABILITY.—Subject to
 21 the other provisions of this subsection, a fiduciary
 22 shall not be liable in an individual capacity under
 23 this Act.

24 “(3) EXCEPTIONS.—This subsection does not
 25 preclude a claim under this Act against—

1 “(A) the assets of the estate or trust ad-
2 ministered by a fiduciary;

3 “(B) a nonemployee agent or independent
4 contractor retained by a fiduciary; or

5 “(C) a fiduciary that causes or contributes
6 to a release or threatened release of a hazard-
7 ous substance.

8 “(4) SAFE HARBOR.—Subject to paragraph (5),
9 a fiduciary shall not be liable in an individual capac-
10 ity under this Act for—

11 “(A) undertaking or directing another to
12 undertake a response action under section
13 107(d)(1) or under the direction of an on-scene
14 coordinator designated by the Administrator or
15 the Coast Guard to coordinate and direct re-
16 sponses under subpart D of the National Con-
17 tingency Plan or by the lead agency to coordi-
18 nate and direct removal actions under subpart
19 E of the National Contingency Plan;

20 “(B) undertaking or directing another to
21 undertake any other lawful means of addressing
22 a hazardous substance in connection with a ves-
23 sel or facility;

24 “(C) terminating the fiduciary relationship;

1 “(D) including, monitoring, or enforcing a
2 covenant, warranty, or other term or condition
3 in the terms of a fiduciary agreement that re-
4 lates to compliance with environmental laws;

5 “(E) monitoring or undertaking 1 or more
6 inspections of a vessel or facility;

7 “(F) providing financial or other advice or
8 counseling to any party to the fiduciary rela-
9 tionship, including the settlor or beneficiary;

10 “(G) restructuring, renegotiating, or other-
11 wise altering a term or condition of the fidu-
12 ciary relationship;

13 “(H) administering a vessel or facility that
14 was contaminated before the period of service of
15 the fiduciary began; or

16 “(I) declining to take any of the actions
17 described in subparagraphs (B) through (H).

18 “(5) DUE CARE.—This subsection does not
19 limit the liability of a fiduciary if the fiduciary fails
20 to exercise due care and the failure causes or con-
21 tributes to the release of a hazardous substance.

22 “(6) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to—

1 “(A) affect the rights or immunities or
2 other defenses that are available under this Act
3 or other applicable law to any person;

4 “(B) create any liability for any person; or

5 “(C) create a private right of action
6 against a fiduciary or against a Federal agency
7 that regulates lenders.

8 “(o) LIABILITY OF LENDERS.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) ACTUAL BENEFIT.—The term ‘actual
11 benefit’ means the net gain, if any, realized by
12 a lender due to an action.

13 “(B) EXTENSION OF CREDIT.—The term
14 ‘extension of credit’ includes a lease finance
15 transaction—

16 “(i) in which the lessor does not ini-
17 tially select the leased vessel or facility and
18 does not during the lease term control the
19 daily operations or maintenance of the ves-
20 sel or facility; or

21 “(ii) that conforms to all regulations
22 issued by any appropriate Federal banking
23 agency (as defined in section 3(q) of the
24 Federal Deposit Insurance Act (12 U.S.C.

1 1813(q))) and any appropriate State bank-
2 ing regulatory authority.

3 “(C) FORECLOSURE.—The term ‘fore-
4 closure’ means the acquisition of a vessel or fa-
5 cility through—

6 “(i) purchase at sale under a judg-
7 ment or decree, a power of sale, a
8 nonjudicial foreclosure sale, or from a
9 trustee, deed in lieu of foreclosure, or simi-
10 lar conveyance, or through repossession, if
11 the vessel or facility was security for an ex-
12 tension of credit previously contracted;

13 “(ii) conveyance under an extension of
14 credit previously contracted, including the
15 termination of a lease agreement; or

16 “(iii) any other formal or informal
17 manner by which a person acquires, for
18 subsequent disposition, possession of collat-
19 eral in order to protect the security inter-
20 est of the person.

21 “(D) LENDER.—The term ‘lender’
22 means—

23 “(i) a person that makes a bona fide
24 extension of credit to, or takes a security
25 interest from, another party;

1 “(ii) the Federal National Mortgage
2 Association, the Federal Home Loan Mort-
3 gage Corporation, the Federal Agricultural
4 Mortgage Corporation, or any other entity
5 that in a bona fide manner is engaged in
6 the business of buying or selling loans or
7 interests in loans;

8 “(iii) a person engaged in the business
9 of insuring or guaranteeing against a de-
10 fault in the repayment of an extension of
11 credit, or acting as a surety with respect to
12 an extension of credit, to another party;
13 and

14 “(iv) a person regularly engaged in
15 the business of providing title insurance
16 that acquires a vessel or facility as a result
17 of an assignment or conveyance in the
18 course of underwriting a claim or claim
19 settlement.

20 “(E) NET GAIN.—The term ‘net gain’
21 means an amount not in excess of the amount
22 realized by a lender on the sale of a vessel or
23 facility less acquisition, holding, and disposition
24 costs.

1 “(F) VESSEL OR FACILITY ACQUIRED
2 THROUGH FORECLOSURE.—The term ‘vessel or
3 facility acquired through foreclosure’—

4 “(i) means a vessel or facility that is
5 acquired by a lender through foreclosure
6 from a person that is not affiliated with
7 the lender; but

8 “(ii) does not include such a vessel or
9 facility if the lender does not seek to sell
10 or otherwise divest the vessel or facility at
11 the earliest practicable, commercially rea-
12 sonable time, on commercially reasonable
13 terms, taking into account market condi-
14 tions and legal and regulatory require-
15 ments.

16 “(2) LIABILITY LIMITATION.—

17 “(A) IN GENERAL.—The liability of a lend-
18 er that is liable under any other provision of
19 this Act for the release or threatened release of
20 a hazardous substance at, from, or in connec-
21 tion with a vessel or facility shall be limited to
22 the amount described in subparagraph (E) if
23 the vessel or facility is—

24 “(i) a vessel or facility acquired
25 through foreclosure;

1 “(ii) a vessel or facility subject to a
2 security interest held by the lender;

3 “(iii) a vessel or facility held by a les-
4 sor under the terms of an extension of
5 credit; or

6 “(iv) a vessel or facility subject to fi-
7 nancial control or financial oversight under
8 the terms of an extension of credit.

9 “(B) AMOUNT.—The amount described in
10 this subparagraph is the excess of the fair mar-
11 ket value of a vessel or facility on the date on
12 which the liability of a lender is determined
13 over the fair market value of the vessel or facil-
14 ity on the date that is 180 days before the date
15 on which the response action is initiated, not to
16 exceed the amount that the lender realizes on
17 the sale of the vessel or facility after subtract-
18 ing acquisition, holding, and disposition costs.

19 “(3) EXCLUSION.—This subsection does not
20 limit the liability of a lender that causes or contrib-
21 utes to the release or threatened release of a hazard-
22 ous substance.

23 “(4) RULE OF CONSTRUCTION.—Nothing in
24 this subsection shall be construed to—

1 “(A) affect the rights or immunities or
2 other defenses that are available under this Act
3 or other applicable law to any person;

4 “(B) create any liability for any person; or

5 “(C) create a private right of action
6 against a lender or against a Federal agency
7 that regulates lenders.”.

8 **SEC. 304. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.**

9 The Federal Deposit Insurance Act (12 U.S.C. 1811
10 et seq.) is amended by adding at the end the following:

11 **“SEC. 45. FEDERAL BANKING AND LENDING AGENCY LI-**
12 **ABILITY.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) FEDERAL BANKING OR LENDING AGEN-
15 CY.—The term ‘Federal banking or lending
16 agency’—

17 “(A) means the Corporation, the Resolu-
18 tion Trust Corporation, the Board of Governors
19 of the Federal Reserve System, the Comptroller
20 of the Currency, the Office of Thrift Super-
21 vision, a Federal Reserve Bank, a Federal
22 Home Loan Bank, the Department of Housing
23 and Urban Development, the National Credit
24 Union Administration Board, the Farm Credit
25 Administration, the Farm Credit System Insur-

1 ance Corporation, the Farm Credit System As-
2 sistance Board, the Farmers Home Administra-
3 tion, the Rural Electrification Administration,
4 the Small Business Administration, and any
5 other Federal agency acting in a similar capac-
6 ity, in any of their capacities, and their agents
7 or appointees; and

8 “(B) includes a first subsequent purchaser
9 of the vessel or facility from a Federal banking
10 or lending agency, unless the purchaser—

11 “(i) would otherwise be liable or po-
12 tentially liable for all or part of the costs
13 of the removal, remedial, corrective, or
14 other response action due to a prior rela-
15 tionship with the vessel or facility;

16 “(ii) is or was affiliated with or relat-
17 ed to a party described in clause (i);

18 “(iii) fails to agree to take reasonable
19 steps necessary to remedy the release or
20 threatened release or to protect public
21 health and safety in a manner consistent
22 with the purposes of applicable environ-
23 mental laws; or

1 “(iv) causes or contributes to any ad-
2 ditional release or threatened release on
3 the vessel or facility.

4 “(2) FACILITY.—The term ‘facility’ has the
5 meaning stated in section 101 of the Comprehensive
6 Environmental Response, Compensation, and Liabil-
7 ity Act of 1980 (42 U.S.C. 9601).

8 “(3) HAZARDOUS SUBSTANCE.—The term ‘haz-
9 ardous substance’ means a hazardous substance (as
10 defined in section 101 of the Comprehensive Envi-
11 ronmental Response, Compensation, and Liability
12 Act of 1980 (42 U.S.C. 9601)).

13 “(4) RELEASE.—The term ‘release’ has the
14 meaning stated in section 101 of the Comprehensive
15 Environmental Response, Compensation, and Liabil-
16 ity Act of 1980 (42 U.S.C. 9601).

17 “(5) RESPONSE ACTION.—The term ‘response
18 action’ has the meaning stated in section 101 of the
19 Comprehensive Environmental Response, Compensa-
20 tion, and Liability Act of 1980 (42 U.S.C. 9601).

21 “(6) VESSEL.—The term ‘vessel’ has the mean-
22 ing stated in section 101 of the Comprehensive En-
23 vironmental Response, Compensation, and Liability
24 Act of 1980 (42 U.S.C. 9601).

1 “(b) FEDERAL BANKING AND LENDING AGENCIES
2 NOT STRICTLY LIABLE.—

3 “(1) IN GENERAL.—Except as provided in para-
4 graph (2), a Federal banking or lending agency shall
5 not be liable under section 106 or 107 of the Com-
6 prehensive Environmental Response, Compensation,
7 and Liability Act of 1980 (42 U.S.C. 9606, 9607)
8 for the release or threatened release of a hazardous
9 substance at or from a vessel or facility (including
10 a right or interest in a vessel or facility) acquired—

11 “(A) in connection with the exercise of re-
12 ceivership or conservatorship authority, or the
13 liquidation or winding up of the affairs of an
14 insured depository institution, including a sub-
15 sidiary of an insured depository institution;

16 “(B) in connection with the provision of a
17 loan, a discount, an advance, a guarantee, in-
18 surance, or other financial assistance; or

19 “(C) in connection with a vessel or facility
20 received in a civil or criminal proceeding, or ad-
21 ministrative enforcement action, whether by set-
22 tlement or by order.

23 “(2) ACTIVE CAUSATION.—Subject to section
24 107(d) of the Comprehensive Environmental Re-
25 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9607(d)), a Federal banking or lending agen-
2 cy that causes or contributes to a release or threat-
3 ened release of a hazardous substance may be liable
4 for a response action pertaining to the release or
5 threatened release.

6 “(3) FEDERAL OR STATE ACTION.—Notwith-
7 standing subsection (a)(1)(B), if a Federal agency
8 or State environmental agency is required to take a
9 response action because a subsequent purchaser—

10 “(A) fails to agree to take reasonable steps
11 necessary to remedy a release or threatened re-
12 lease or to protect public health and safety in
13 a manner consistent with the purposes of appli-
14 cable environmental laws; or

15 “(B) causes or contributes to any addi-
16 tional release or threatened release on the vessel
17 or facility,

18 the subsequent purchaser shall reimburse the Fed-
19 eral agency or State environmental agency for the
20 costs of the response action in an amount not to ex-
21 ceed the increase in the fair market value of the ves-
22 sel or facility attributable to the response action.

23 “(c) LIEN EXEMPTION.—Notwithstanding any other
24 law, a vessel or facility held by a subsequent purchaser
25 described in subsection (a)(1)(B) or held by a Federal

1 banking or lending agency shall not be subject to a lien
 2 for costs or damages associated with the release or threat-
 3 ened release of a hazardous substance existing at the time
 4 of the transfer.

5 “(d) EXEMPTION FROM COVENANTS TO REMEDI-
 6 ATE.—Notwithstanding section 120, a Federal banking or
 7 lending agency shall be exempt from any law requiring the
 8 agency to grant a covenant warranting that a response
 9 action has been, or will in the future be, taken with respect
 10 to a vessel or facility acquired in a manner described in
 11 subsection (b)(1).

12 “(e) RULES OF CONSTRUCTION.—Nothing in this
 13 section shall be construed to—

14 “(1) affect the rights or immunities or other de-
 15 fenses that are available to any party under this Act,
 16 the Comprehensive Environmental Response, Com-
 17 pensation, and Liability Act of 1980 (42 U.S.C.
 18 9601 et seq.) or any other law;

19 “(2) create any liability for any party;

20 “(3) create a private right of action against an
 21 insured depository institution or lender, a Federal
 22 banking or lending agency, or any other party, ex-
 23 cept as provided in subsection (b)(3);

24 “(4) preempt, affect, apply to, or modify a
 25 State law or a right, cause of action, or obligation

1 under State law, except that the liability of a Fed-
 2 eral banking or lending agency for a response action
 3 under a State law shall not exceed the value of the
 4 interest of the agency in the asset giving rise to the
 5 liability; or

6 “(5) preclude a Federal banking or lending
 7 agency from agreeing with a State to transfer a ves-
 8 sel or facility to the State in lieu of any liability that
 9 might otherwise be imposed under State law.”.

10 **SEC. 305. CONTIGUOUS PROPERTIES.**

11 Section 107 of the Comprehensive Environmental Re-
 12 sponse, Compensation, and Liability Act of 1980 (42
 13 U.S.C. 9607(a)), as amended by section 303(b), is amend-
 14 ed by adding at the end the following:

15 “(p) CONTIGUOUS PROPERTIES.—

16 “(1) NOT CONSIDERED TO BE AN OWNER OR
 17 OPERATOR.—A person that owns or operates real
 18 property that is contiguous to or otherwise similarly
 19 situated with respect to real property on which there
 20 has been a release or threatened release of a hazard-
 21 ous substance and that is or may be contaminated
 22 by the release shall not be considered to be an owner
 23 or operator of a vessel or facility under subsection
 24 (a) (1) or (2) solely by reason of the contamination
 25 if—

1 “(A) the person did not cause, contribute,
2 or consent to the release or threatened release;
3 and

4 “(B) the person is not liable, and is not af-
5 filiated with any other person that is liable, for
6 any response costs at the facility, through any
7 direct or indirect familial relationship, or any
8 contractual, corporate, or financial relationship
9 other than that created by the instruments by
10 which title to the facility is conveyed or fi-
11 nanced.

12 “(2) COOPERATION, ASSISTANCE, AND AC-
13 CESS.—Notwithstanding paragraph (1), a person de-
14 scribed in paragraph (1) shall provide full coopera-
15 tion, assistance, and facility access to the persons
16 that are responsible for response actions at the facil-
17 ity, including the cooperation and access necessary
18 for the installation, integrity, operation, and mainte-
19 nance of any complete or partial response action at
20 the facility.

21 “(3) ASSURANCES.—The Administrator may—

22 “(A) issue an assurance that no enforce-
23 ment action under this Act will be initiated
24 against a person described in paragraph (1);
25 and

1 “(B) grant a person described in para-
 2 graph (1) protection against a cost recovery or
 3 contribution action under section 113(f).”.

4 **SEC. 306. PROSPECTIVE PURCHASERS AND WINDFALL**
 5 **LIENS.**

6 (a) DEFINITION.—Section 101 of the Comprehensive
 7 Environmental Response, Compensation, and Liability Act
 8 of 1980 (42 U.S.C. 9601), as amended by section
 9 303(a)(2), is amended by adding at the end the following:

10 “(41) BONA FIDE PROSPECTIVE PURCHASER.—
 11 The term ‘bona fide prospective purchaser’ means a
 12 person that acquires ownership of a facility after the
 13 date of enactment of this paragraph, or a tenant of
 14 such a person, that establishes each of the following
 15 by a preponderance of the evidence:

16 “(A) DISPOSAL PRIOR TO ACQUISITION.—
 17 All active disposal of hazardous substances at
 18 the facility occurred before the person acquired
 19 the facility.

20 “(B) INQUIRIES.—

21 “(i) IN GENERAL.—The person made
 22 all appropriate inquiries into the previous
 23 ownership and uses of the facility and the
 24 facility’s real property in accordance with

1 generally accepted good commercial and
2 customary standards and practices.

3 “(ii) STANDARDS AND PRACTICES.—
4 The standards and practices referred to in
5 paragraph (35)(B)(ii) or those issued or
6 adopted by the Administrator under that
7 paragraph shall be considered to satisfy
8 the requirements of this subparagraph.

9 “(iii) RESIDENTIAL USE.—In the case
10 of property for residential or other similar
11 use purchased by a nongovernmental or
12 noncommercial entity, a facility inspection
13 and title search that reveal no basis for
14 further investigation shall be considered to
15 satisfy the requirements of this subpara-
16 graph.

17 “(C) NOTICES.—The person provided all
18 legally required notices with respect to the dis-
19 covery or release of any hazardous substances
20 at the facility.

21 “(D) CARE.—The person exercised appro-
22 priate care with respect to each hazardous sub-
23 stance found at the facility by taking reasonable
24 steps to stop any continuing release, prevent
25 any threatened future release and prevent or

1 limit human or natural resource exposure to
2 any previously released hazardous substance.

3 “(E) COOPERATION, ASSISTANCE, AND AC-
4 CESS.—The person provides full cooperation,
5 assistance, and facility access to the persons
6 that are responsible for response actions at the
7 facility, including the cooperation and access
8 necessary for the installation, integrity, oper-
9 ation, and maintenance of any complete or par-
10 tial response action at the facility.

11 “(F) RELATIONSHIP.—The person is not
12 liable, and is not affiliated with any other per-
13 son that is liable, for any response costs at the
14 facility, through any direct or indirect familial
15 relationship, or any contractual, corporate, or
16 financial relationship other than that created by
17 the instruments by which title to the facility is
18 conveyed or financed.”.

19 (b) AMENDMENT.—Section 107 of the Comprehen-
20 sive Environmental Response, Compensation, and Liabil-
21 ity Act of 1980 (42 U.S.C. 9607), as amended by section
22 305, is amended by adding at the end the following:

23 “(q) PROSPECTIVE PURCHASER AND WINDFALL
24 LIEN.—

1 “(1) LIMITATION ON LIABILITY.—Notwith-
 2 standing subsection (a), a bona fide prospective pur-
 3 chaser whose potential liability for a release or
 4 threatened release is based solely on the purchaser’s
 5 being considered to be an owner or operator of a fa-
 6 cility shall not be liable as long as the bona fide pro-
 7 spective purchaser does not impede the performance
 8 of a response action or natural resource restoration.

9 “(2) LIEN.—If there are unrecovered response
 10 costs at a facility for which an owner of the facility
 11 is not liable by reason of subsection (n)(1)(C) and
 12 each of the conditions described in paragraph (3) is
 13 met, the United States shall have a lien on the facil-
 14 ity, or may obtain from appropriate responsible
 15 party a lien on any other property or other assur-
 16 ances of payment satisfactory to the Administrator,
 17 for such unrecovered costs.

18 “(3) CONDITIONS.—The conditions referred to
 19 in paragraph (1) are the following:

20 “(A) RESPONSE ACTION.—A response ac-
 21 tion for which there are unrecovered costs is
 22 carried out at the facility.

23 “(B) FAIR MARKET VALUE.—The response
 24 action increases the fair market value of the fa-
 25 cility above the fair market value of the facility

1 that existed 180 days before the response action
2 was initiated.

3 “(C) SALE.—A sale or other disposition of
4 all or a portion of the facility has occurred.

5 “(4) AMOUNT.—A lien under paragraph (2)—

6 “(A) shall not exceed the increase in fair
7 market value of the property attributable to the
8 response action at the time of a subsequent sale
9 or other disposition of the property;

10 “(B) shall arise at the time at which costs
11 are first incurred by the United States with re-
12 spect to a response action at the facility;

13 “(C) shall be subject to the requirements
14 of subsection (l)(3); and

15 “(D) shall continue until the earlier of sat-
16 isfaction of the lien or recovery of all response
17 costs incurred at the facility.”.

18 **SEC. 307. SAFE HARBOR INNOCENT LANDHOLDERS.**

19 (a) AMENDMENT.—Section 101(35) of the Com-
20 prehensive Environmental Response, Compensation, and
21 Liability Act of 1980 (42 U.S.C. 9601(35)) is amended
22 by striking subparagraph (B) and inserting the following:

23 “(B) KNOWLEDGE OF INQUIRY REQUIRE-
24 MENT.—

1 “(i) ALL APPROPRIATE INQUIRIES.—

2 To establish that the defendant had no
3 reason to know of the matter described in
4 subparagraph (A)(i), the defendant must
5 show that, at or prior to the date on which
6 the defendant acquired the facility, the de-
7 fendant undertook all appropriate inquiries
8 into the previous ownership and uses of the
9 facility in accordance with generally ac-
10 cepted good commercial and customary
11 standards and practices.

12 “(ii) STANDARDS AND PRACTICES.—

13 The Administrator shall by regulation es-
14 tablish as standards and practices for the
15 purpose of clause (i)—

16 “(I) the American Society for
17 Testing and Materials (ASTM) Stand-
18 ard E1527–94, entitled ‘Standard
19 Practice for Environmental Site As-
20 sessments: Phase I Environmental
21 Site Assessment Process’; or

22 “(II) alternative standards and
23 practices under clause (iii).

24 “(iii) ALTERNATIVE STANDARDS AND
25 PRACTICES.—

1 “(I) IN GENERAL.—The Admin-
2 istrator may by regulation issue alter-
3 native standards and practices or des-
4 ignate standards developed by other
5 organizations than the American Soci-
6 ety for Testing and Materials after
7 conducting a study of commercial and
8 industrial practices concerning the
9 transfer of real property in the United
10 States.

11 “(II) CONSIDERATIONS.—In issu-
12 ing or designating alternative stand-
13 ards and practices under subclause
14 (I), the Administrator shall consider
15 including each of the following:

16 “(aa) The results of an in-
17 quiry by an environmental pro-
18 fessional.

19 “(bb) Interviews with past
20 and present owners, operators,
21 and occupants of the facility and
22 the facility’s real property for the
23 purpose of gathering information
24 regarding the potential for con-

1 tamination at the facility and the
2 facility's real property.

3 “(cc) Reviews of historical
4 sources, such as chain of title
5 documents, aerial photographs,
6 building department records, and
7 land use records to determine
8 previous uses and occupancies of
9 the real property since the prop-
10 erty was first developed.

11 “(dd) Searches for recorded
12 environmental cleanup liens, filed
13 under Federal, State, or local
14 law, against the facility or the fa-
15 cility's real property.

16 “(ee) Reviews of Federal,
17 State, and local government
18 records (such as waste disposal
19 records), underground storage
20 tank records, and hazardous
21 waste handling, generation, treat-
22 ment, disposal, and spill records,
23 concerning contamination at or
24 near the facility or the facility's
25 real property.

1 “(ff) Visual inspections of
2 the facility and facility’s real
3 property and of adjoining prop-
4 erties.

5 “(gg) Specialized knowledge
6 or experience on the part of the
7 defendant.

8 “(hh) The relationship of
9 the purchase price to the value of
10 the property if the property was
11 uncontaminated.

12 “(ii) Commonly known or
13 reasonably ascertainable informa-
14 tion about the property.

15 “(jj) The degree of obvious-
16 ness of the presence or likely
17 presence of contamination at the
18 property, and the ability to detect
19 such contamination by appro-
20 priate investigation.

21 “(iv) SITE INSPECTION AND TITLE
22 SEARCH.—In the case of property for resi-
23 dential use or other similar use purchased
24 by a nongovernmental or noncommercial
25 entity, a facility inspection and title search

1 that reveal no basis for further investiga-
2 tion shall be considered to satisfy the re-
3 quirements of this subparagraph.”.

4 (b) STANDARDS AND PRACTICES.—

5 (1) ESTABLISHMENT BY REGULATION.—The
6 Administrator of the Environmental Protection
7 Agency shall issue the regulation required by section
8 101(35)(B)(ii) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980,
10 as added by subsection (a), not later than 1 year
11 after the date of enactment of this Act.

12 (2) INTERIM STANDARDS AND PRACTICES.—
13 Until the Administrator issues the regulation de-
14 scribed in paragraph (1), in making a determination
15 under section 101(35)(B)(i) of the Comprehensive
16 Environmental Response, Compensation, and Liabil-
17 ity Act of 1980, as added by subsection (a), there
18 shall be taken into account—

19 (A) any specialized knowledge or experi-
20 ence on the part of the defendant;

21 (B) the relationship of the purchase price
22 to the value of the property if the property was
23 uncontaminated;

24 (C) commonly known or reasonably ascer-
25 tainable information about the property;

1 (D) the degree of obviousness of the pres-
 2 ence or likely presence of contamination at the
 3 property; and

4 (E) the ability to detect the contamination
 5 by appropriate investigation.

6 **TITLE IV—SELECTION OF** 7 **REMEDIAL ACTIONS**

8 **SEC. 401. DEFINITIONS.**

9 Section 101 of the Comprehensive Environmental Re-
 10 sponse, Compensation, and Liability Act of 1980 (42
 11 U.S.C. 9601), as amended by section 306(a), is amended
 12 by adding at the end the following:

13 “(42) ACTUAL OR PLANNED OR REASONABLY
 14 ANTICIPATED FUTURE USE OF THE LAND AND
 15 WATER RESOURCES.—The term ‘actual or planned
 16 or reasonably anticipated future use of the land and
 17 water resources’ means—

18 “(A) the actual use of the land, surface
 19 water, and ground water at a facility on the
 20 date of submittal of the proposed remedial ac-
 21 tion plan; and

22 “(B)(i) with respect to land—

23 “(I) the use of land that is authorized
 24 by the zoning or land use decisions for-
 25 mally adopted, at or prior to the time of

1 the initiation of the facility evaluation, by
2 the local land use planning authority for a
3 facility and the land immediately adjacent
4 to the facility; and

5 “(II) any other reasonably anticipated
6 use that the local land use authority, in
7 consultation with the community response
8 organization (if any), determines to have a
9 substantial probability of occurring based
10 on recent (as of the time of the determina-
11 tion) development patterns in the area in
12 which the facility is located and on popu-
13 lation projections for the area; and

14 “(ii) with respect to water resources, the
15 future use of the surface water and ground
16 water that is potentially affected by releases
17 from a facility that is reasonably anticipated, by
18 a local government or other governmental unit
19 that regulates surface or ground water use or
20 surface or ground water use planning in the vi-
21 cinity of the facility, on the earlier of—

22 “(I) the date of issuance of the first
23 record of decision; or

24 “(II) the initiation of the facility eval-
25 uation.

1 “(43) SIGNIFICANT ECOSYSTEM.—The term
2 ‘significant ecosystem’, for the purpose of section
3 121(a)(1)(B), means an ecosystem that exhibits a
4 uniqueness, particular value, or historical presence
5 or that is widely recognized as a significant resource
6 at the national, State or local level.

7 “(44) VALUABLE ECOSYSTEM.—The term ‘valu-
8 able ecosystem’ means an ecosystem that is a known
9 source of significant human or ecological benefits for
10 its function.

11 “(45) SUSTAINABLE ECOSYSTEM.—The term
12 ‘sustainable ecosystem’ means an ecosystem that has
13 redundancy and resiliency sufficient to enable the
14 ecosystem to continue to function and provide bene-
15 fits within the normal range of its variability not-
16 withstanding exposure to hazardous substances re-
17 sulting from releases.

18 “(46) ECOLOGICAL RESOURCE.—The term ‘eco-
19 logical resource’ means land, fish, wildlife, biota, air,
20 surface water, and ground water within an eco-
21 system.

22 “(47) SIGNIFICANT RISK TO ECOLOGICAL RE-
23 SOURCES THAT ARE NECESSARY TO THE SUSTAIN-
24 ABILITY OF A SIGNIFICANT ECOSYSTEM OR VALU-
25 ABLE ECOSYSTEM.—The term ‘significant risk to ec-

1 ological resources that are necessary to the sustain-
 2 ability of a significant ecosystem or valuable eco-
 3 system’ means the risk associated with exposures
 4 and impacts resulting from the release of hazardous
 5 substances which together reduce or eliminate the
 6 sustainability (within the meaning of paragraph
 7 (45)) of a significant ecosystem or valuable eco-
 8 system.”.

9 **SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL**
 10 **ACTIONS.**

11 Section 121 of the Comprehensive Environmental Re-
 12 sponse, Compensation, and Liability Act of 1980 (42
 13 U.S.C. 9621) is amended—

14 (1) by striking the section heading and sub-
 15 sections (a) and (b) and inserting the following:

16 **“SEC. 121. SELECTION AND IMPLEMENTATION OF REME-**
 17 **DIAL ACTIONS.**

18 “(a) GENERAL RULES.—

19 “(1) SELECTION OF MOST COST-EFFECTIVE RE-
 20 MEDIAL ACTION THAT PROTECTS HUMAN HEALTH
 21 AND THE ENVIRONMENT.—

22 “(A) IN GENERAL.—The Administrator
 23 shall select a remedial action that is the most
 24 cost-effective means of achieving the goals of
 25 protecting human health and the environment

1 as stated in subparagraph (B) using the criteria
2 stated in subparagraph (C).

3 “(B) GOALS OF PROTECTING HUMAN
4 HEALTH AND THE ENVIRONMENT.—

5 “(i) PROTECTION OF HUMAN
6 HEALTH.—A remedial action shall be con-
7 sidered to protect human health if, consid-
8 ering the expected exposures associated
9 with the actual or planned or reasonably
10 anticipated future use of the land and
11 water resources, the remedial action
12 achieves a residual risk—

13 “(I) from exposure to carcino-
14 genic hazardous substances, pollut-
15 ants, or contaminants such that cu-
16 mulative lifetime additional cancer
17 from exposure to hazardous sub-
18 stances from releases at the facility
19 range from 10^{-4} to 10^{-6} for the af-
20 fected population; and

21 “(II) from exposure to
22 noncarcinogenic hazardous sub-
23 stances, pollutants, or contaminants
24 at the facility that does not pose an
25 appreciable risk of deleterious effects.

1 “(ii) PROTECTION OF THE ENVIRON-
2 MENT.—A remedial action shall be consid-
3 ered to protect the environment if, based
4 on the actual or planned or reasonably an-
5 ticipated future use of the land and water
6 resources, the remedial action will protect
7 against significant risks to ecological re-
8 sources that are necessary to the sustain-
9 ability of a significant ecosystem or valu-
10 able ecosystem and will not interfere with
11 a sustainable functional ecosystem.

12 “(C) COMPLIANCE WITH FEDERAL AND
13 STATE LAWS.—

14 “(i) SUBSTANTIVE REQUIREMENTS.—

15 “(I) IN GENERAL.—Subject to
16 clause (iii), a remedial action shall—

17 “(aa) comply with the sub-
18 stantive requirements of all pro-
19 mulgated standards, require-
20 ments, criteria, and limitations
21 under each Federal law and each
22 State law relating to the environ-
23 ment or to the siting of facilities
24 (including a State law that im-
25 poses a more stringent standard,

1 requirement, criterion, or limita-
2 tion than Federal law) that is ap-
3 plicable to the conduct or oper-
4 ation of the remedial action or to
5 determination of the level of
6 cleanup for remedial actions; and

7 “(bb) comply with or attain
8 any other promulgated standard,
9 requirement, criterion, or limita-
10 tion under any State law relating
11 to the environment or siting of
12 facilities that applies to the con-
13 duct or operation of remedial ac-
14 tions under this Act, as deter-
15 mined by the State, after the
16 date of enactment of the Acceler-
17 ated Cleanup and Environmental
18 Restoration Act of 1996, through
19 a rulemaking procedure that in-
20 cludes public notice, comment,
21 and written response comment,
22 and opportunity for judicial re-
23 view, but only if the State dem-
24 onstrates that the standard, re-
25 quirement, criterion, or limitation

1 is consistently applied to reme-
2 dial actions under State law.

3 “(II) IDENTIFICATION OF FACILI-
4 TIES.—Compliance with a State
5 standard, requirement, criterion, or
6 limitation described in subclause (I)
7 shall be required at a facility if the
8 standard, requirement, criterion, or
9 limitation has been identified by the
10 State to the Administrator in a timely
11 manner as being applicable to the fa-
12 cility.

13 “(III) PUBLISHED LISTS.—Each
14 State shall publish a comprehensive
15 list of the standards, requirements,
16 criteria, and limitations that the State
17 may apply to remedial actions under
18 this Act, and shall revise the list peri-
19 odically, as requested by the Adminis-
20 trator.

21 “(IV) CONTAMINATED MEDIA.—
22 Compliance with this clause shall not
23 be required with respect to return, re-
24 placement, or disposal of contami-
25 nated media or residuals of contami-

1 nated media into the same media in
2 or very near then-existing areas of
3 contamination onsite at a facility.

4 “(ii) PROCEDURAL REQUIREMENTS.—

5 Procedural requirements of Federal and
6 State standards, requirements, criteria,
7 and limitations (including permitting re-
8 quirements) shall not apply to response ac-
9 tions conducted onsite at a facility.

10 “(iii) WAIVER PROVISIONS.—

11 “(I) DETERMINATION BY THE
12 PRESIDENT.—The Administrator shall
13 evaluate and determine if it is not ap-
14 propriate for a remedial action to at-
15 tain a Federal or State standard, re-
16 quirement, criterion, or limitation as
17 required by clause (i).

18 “(II) SELECTION OF REMEDIAL
19 ACTION THAT DOES NOT COMPLY.—

20 The Administrator may select for a
21 facility a remedial action that meets
22 the requirements of subparagraph (B)
23 but does not comply with or attain a
24 Federal or State standard, require-
25 ment, criterion, or limitation described

1 in clause (i) if the Administrator
2 makes any of the following findings:

3 “(aa) IMPROPER IDENTI-
4 FICATION.—The standard, re-
5 quirement, criterion, or limitation
6 was improperly identified as an
7 applicable requirement under
8 clause (i)(I)(aa) and fails to com-
9 ply with the rulemaking require-
10 ments of clause (i)(I)(bb).

11 “(bb) PART OF REMEDIAL
12 ACTION.—The selected remedial
13 action is only part of a total re-
14 medial action that will comply
15 with or attain the applicable re-
16 quirements of clause (i) when the
17 total remedial action is com-
18 pleted.

19 “(cc) GREATER RISK.—
20 Compliance with or attainment of
21 the standard, requirement, cri-
22 terion, or limitation at the facil-
23 ity will result in greater risk to
24 human health or the environment
25 than alternative options.

1 “(dd) TECHNICALLY IM-
2 PRACTICABILITY.—Compliance
3 with or attainment of the stand-
4 ard, requirement, criterion, or
5 limitation is technically infeasible
6 from an engineering perspective
7 or unreasonably costly.

8 “(ee) EQUIVALENT TO
9 STANDARD OF PERFORMANCE.—
10 The selected remedial action will
11 attain a standard of performance
12 that is equivalent to that re-
13 quired under a standard, require-
14 ment, criterion, or limitation de-
15 scribed in clause (i) through use
16 of another approach.

17 “(ff) INCONSISTENT APPLI-
18 CATION.—With respect to a State
19 standard, requirement, criterion,
20 limitation, or level, the State has
21 not consistently applied (or dem-
22 onstrated the intention to apply
23 consistently) the standard, re-
24 quirement, criterion, or limitation
25 or level in similar circumstances

1 to other remedial actions in the
2 State.

3 “(gg) BALANCE.—In the
4 case of a remedial action to be
5 undertaken solely under section
6 104 or 132 using amounts from
7 the Fund, a selection of a reme-
8 dial action that complies with or
9 attains a standard, requirement,
10 criterion, or limitation described
11 in clause (i) will not provide a
12 balance between the need for pro-
13 tection of public health and wel-
14 fare and the environment at the
15 facility, and the need to make
16 amounts from the Fund available
17 to respond to other facilities that
18 may present a threat to public
19 health or welfare or the environ-
20 ment, taking into consideration
21 the relative immediacy of the
22 threats presented by the various
23 facilities.

24 “(III) PUBLICATION.—The Ad-
25 ministrator shall publish any findings

1 made under subclause (II), including
2 an explanation and appropriate docu-
3 mentation.

4 “(D) REMEDY SELECTION CRITERIA.—In
5 selecting a remedial action from among alter-
6 natives that achieve the goals stated in sub-
7 paragraph (B), the Administrator shall balance
8 the following factors, ensuring that no single
9 factor predominates over the others:

10 “(i) The effectiveness of the remedy in
11 protecting human health and the environ-
12 ment.

13 “(ii) The reliability of the remedial ac-
14 tion in achieving the protectiveness stand-
15 ards over the long term.

16 “(iii) Any short-term risk to the af-
17 fected community, those engaged in the re-
18 medial action effort, and to the environ-
19 ment posed by the implementation of the
20 remedial action.

21 “(iv) The acceptability of the remedial
22 action to the affected community.

23 “(v) The implementability and tech-
24 nical feasibility of the remedial action from
25 an engineering perspective.

1 “(vi) The reasonableness of the cost.

2 “(2) TECHNICAL INFEASIBILITY AND UNREA-
3 SONABLE COST.—

4 “(A) MINIMIZATION OF RISK.—If the Ad-
5 ministrator, after reviewing the remedy selec-
6 tion criteria stated in paragraph (1)(C), finds
7 that achieving the goals stated in paragraph
8 (1)(B), is technically infeasible from an engi-
9 neering perspective or unreasonably costly, the
10 Administrator shall evaluate remedial measures
11 that mitigate the risks to human health and the
12 environment and select a technically practicable
13 remedial action that will most closely achieve
14 the goals stated in paragraph (1) through cost-
15 effective means.

16 “(B) BASIS FOR FINDING.—A finding of
17 technical impracticability may be made on the
18 basis of a determination, supported by appro-
19 priate documentation, that, at the time at
20 which the finding is made—

21 “(i) there is no known reliable means
22 of achieving at a reasonable cost the goals
23 stated in paragraph (1)(B); and

1 “(ii) it has not been shown that such
2 a means is likely to be developed within a
3 reasonable period of time.

4 “(3) PRESUMPTIVE REMEDIAL ACTIONS.—A re-
5 medial action that implements a presumptive reme-
6 dial action issued under section 128 shall be consid-
7 ered to achieve the goals stated in paragraph (1)(B)
8 and balance adequately the factors stated in para-
9 graph (1)(C).

10 “(4) GROUND WATER.—

11 “(A) IN GENERAL.—A remedial action
12 shall protect uncontaminated ground water that
13 is suitable for use as drinking water by humans
14 or livestock in the water’s condition at the time
15 of initiation of the facility evaluation.

16 “(B) CONSIDERATIONS.—A decision under
17 subparagraph (A) regarding remedial action for
18 ground water shall take into consideration—

19 “(i) the actual or planned or reason-
20 ably anticipated future use of the ground
21 water and the timing of that use;

22 “(ii) any attenuation or
23 biodegradation that would occur if no re-
24 medial action were taken; and

1 “(iii) the criteria stated in paragraph
2 (1)(C).

3 “(C) OFFICIAL CLASSIFICATION.—For the
4 purposes of subparagraph (A), there shall be no
5 presumption that because ground water is suit-
6 able for use as drinking water by humans or
7 livestock, such use is the actual or planned or
8 reasonably anticipated future use of the ground
9 water.

10 “(D) UNCONTAMINATED GROUND
11 WATER.—A remedial action for protecting
12 uncontaminated ground water may be based on
13 natural attenuation or biodegradation so long
14 as the remedial action does not interfere with
15 the actual or planned or reasonably anticipated
16 future use of the ground water.

17 “(E) CONTAMINATED GROUND WATER.—A
18 remedial action for contaminated ground water
19 may include point-of-use treatment.

20 “(5) OTHER CONSIDERATIONS APPLICABLE TO
21 REMEDIAL ACTIONS.—A remedial action that uses
22 institutional and engineering controls shall be con-
23 sidered to be on an equal basis with all other reme-
24 dial action alternatives.”;

1 (2) by redesignating subsection (c) as sub-
2 section (b), and, in the first sentence of that sub-
3 section, by striking “5 years” and inserting “7
4 years”;

5 (3) by striking subsection (d); and

6 (4) by redesignating subsections (e) and (f) as
7 subsections (c) and (d), respectively.

8 **SEC. 403. REMEDY SELECTION METHODOLOGY.**

9 Title I of the Comprehensive Environmental Re-
10 sponse, Compensation, and Liability Act of 1980 (42
11 U.S.C. 9601 et seq.) is amended by adding at the end
12 the following:

13 **“SEC. 127. FACILITY-SPECIFIC RISK EVALUATIONS.**

14 “(a) USES.—

15 “(1) IN GENERAL.—A facility-specific risk eval-
16 uation shall be used to—

17 “(A) identify the significant components of
18 potential risk posed by a facility;

19 “(B) screen out potential contaminants,
20 areas, or exposure pathways from further study
21 at a facility;

22 “(C) compare the relative protectiveness of
23 alternative potential remedies proposed for a fa-
24 cility; and

1 “(D) demonstrate that the remedial action
2 selected for a facility is capable of protecting
3 human health and the environment considering
4 the actual or planned or reasonably anticipated
5 future use of the land and water resources.

6 “(2) COMPLIANCE WITH PRINCIPLES.—A facil-
7 ity-specific risk evaluation shall comply with the
8 principles stated in this section to ensure that—

9 “(A) actual or planned or reasonably an-
10 ticipated future use of the land and water re-
11 sources is given appropriate consideration; and

12 “(B) all of the components of the evalua-
13 tion are, to the maximum extent practicable,
14 scientifically objective and inclusive of all rel-
15 evant data.

16 “(b) RISK EVALUATION PRINCIPLES.—A facility-spe-
17 cific risk evaluation shall—

18 “(1) be based on actual or plausible estimates
19 of exposure considering the actual or planned or rea-
20 sonably anticipated future use of the land and water
21 resources;

22 “(2) be comprised of components each of which
23 is, to the maximum extent practicable, scientifically
24 objective, and inclusive of all relevant data;

1 “(3) use chemical and facility-specific data and
2 analysis (such as toxicity, exposure, and fate and
3 transport evaluations) in preference to default as-
4 sumptions;

5 “(4) use a range and distribution of realistic
6 and plausible assumptions when chemical and facil-
7 ity-specific data are not available;

8 “(5) use mathematical models that take into ac-
9 count the fate and transport of hazardous sub-
10 stances, pollutants, or contaminants, in the environ-
11 ment instead of relying on default assumptions; and

12 “(6) use credible hazard identification and dose/
13 response assessments.

14 “(c) RISK COMMUNICATION PRINCIPLES.—The docu-
15 ment reporting the results of a facility-specific risk evalua-
16 tion shall—

17 “(1) contain an explanation that clearly com-
18 municates the risks at the facility;

19 “(2) identify and explain all assumptions used
20 in the evaluation, all alternative assumptions, the
21 policy or value judgments used in choosing the as-
22 sumptions, and whether empirical data conflict with
23 or validate the assumptions;

24 “(3) present—

1 “(A) a range and distribution of exposure
2 and risk estimates, including, if numerical esti-
3 mates are provided, central estimates of expo-
4 sure and risk using—

5 “(i) the most plausible assumptions or
6 a weighted combination of multiple as-
7 sumptions based on different scenarios; or

8 “(ii) any other methodology designed
9 to characterize the most plausible estimate
10 of risk given the scientific information that
11 is available at the time of the facility-spe-
12 cific risk evaluation; and

13 “(B) a statement of the nature and mag-
14 nitude of the scientific and other uncertainties
15 associated with those estimates;

16 “(4) state the size of the population potentially
17 at risk from releases from the facility and the likeli-
18 hood that potential exposures will occur based on the
19 actual or planned or reasonably anticipated future
20 use of the land and water resources; and

21 “(5) compare the risks from the facility to
22 other risks commonly experienced by members of the
23 local community in their daily lives and similar risks
24 regulated by the Federal Government.

1 “(d) REGULATIONS.—Not later than 18 months after
2 the date of enactment of this section, the Administrator
3 shall issue a final regulation implementing this section
4 that promotes a realistic characterization of risk that nei-
5 ther minimizes nor exaggerates the risks and potential
6 risks posed by a facility or a proposed remedial action.

7 **“SEC. 128. PRESUMPTIVE REMEDIAL ACTIONS.**

8 “(a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of this section, the Administrator shall
10 issue a final regulation establishing presumptive remedial
11 actions for commonly encountered types of facilities with
12 reasonably well understood contamination problems and
13 exposure potential.

14 “(b) PRACTICABILITY AND COST-EFFECTIVENESS.—
15 Such presumptive remedies must have been demonstrated
16 to be technically practicable and cost-effective methods of
17 achieving the goals of protecting human health and the
18 environment stated in section 121(a)(1)(B).

19 “(c) VARIATIONS.—The Administrator may issue var-
20 ious presumptive remedial actions based on various uses
21 of land and water resources, various environmental media,
22 and various types of hazardous substances, pollutants, or
23 contaminants.

24 “(d) ENGINEERING CONTROLS.—Presumptive reme-
25 dial actions are not limited to treatment remedies, but

1 may be based on, or include, institutional and standard
2 engineering controls.”.

3 **SEC. 404. REMEDY SELECTION PROCEDURES.**

4 Title I of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9601 et seq.), as amended by section 403, is
7 amended by adding at the end the following:

8 **“SEC. 129. REMEDIAL ACTION PLANNING AND IMPLEMEN-**
9 **TATION.**

10 “(a) IN GENERAL.—

11 “(1) BASIC RULES.—

12 “(A) PROCEDURES.—A remedial action
13 with respect to a facility that is listed or pro-
14 posed for listing on the National Priorities List
15 shall be developed and selected in accordance
16 with the procedures set forth in this section.

17 “(B) NO OTHER PROCEDURES OR RE-
18 QUIREMENTS.—The procedures stated in this
19 section are in lieu of any procedures or require-
20 ments under any other law to conduct remedial
21 investigations, feasibility studies, record of deci-
22 sions, remedial designs, or remedial actions.

23 “(C) LIMITED REVIEW.—In a case in
24 which the potentially responsible parties pre-
25 pare a remedial action plan, only the work plan,

1 facility evaluation, proposed remedial action
2 plan, and final remedial design shall be subject
3 to review, comment, and approval by the Ad-
4 ministrator.

5 “(D) DESIGNATION OF POTENTIALLY RE-
6 SPONSIBLE PARTIES TO PREPARE WORK PLAN,
7 FACILITY EVALUATION, PROPOSED REMEDIAL
8 ACTION, AND REMEDIAL DESIGN AND TO IM-
9 PLEMENT THE REMEDIAL ACTION PLAN.—In
10 the case of a facility for which the Adminis-
11 trator is not required to prepare a work plan,
12 facility evaluation, proposed remedial action,
13 and remedial design and implement the reme-
14 dial action plan—

15 “(i) if a potentially responsible party
16 or group of potentially responsible par-
17 ties—

18 “(I) expresses an intention to
19 prepare a work plan, facility evalua-
20 tion, proposed remedial action plan,
21 and remedial design and to implement
22 the remedial action plan (not includ-
23 ing any such expression of intention
24 that the Administrator finds is not
25 made in good faith); and

1 “(II) demonstrates that the po-
2 tentially responsible party or group of
3 potentially responsible parties has the
4 financial resources and the expertise
5 to perform those functions,

6 the Administrator shall designate the po-
7 tentially responsible party or group of po-
8 tentially responsible parties to perform
9 those functions; and

10 “(ii) if more than 1 potentially re-
11 sponsible party or group of potentially re-
12 sponsible parties—

13 “(I) expresses an intention to
14 prepare a work plan, facility evalua-
15 tion, proposed remedial action plan,
16 and remedial design and to implement
17 the remedial action plan (not includ-
18 ing any such expression of intention
19 that the Administrator finds is not
20 made in good faith); and

21 “(II) demonstrates that the po-
22 tentially responsible parties or group
23 of potentially responsible parties has
24 the financial resources and the exper-
25 tise to perform those functions,

1 the Administrator, based on an assessment
2 of the various parties' comparative finan-
3 cial resources, technical expertise, and his-
4 tories of cooperation with respect to facili-
5 ties that are listed on the National Prior-
6 ities List, shall designate 1 potentially re-
7 sponsible party or group of potentially re-
8 sponsible parties to perform those func-
9 tions.

10 “(E) APPROVAL REQUIRED AT EACH STEP
11 OF PROCEDURE.—No action shall be taken with
12 respect to a facility evaluation, proposed reme-
13 dial action plan, remedial action plan, or reme-
14 dial design, respectively, until a work plan, fa-
15 cility evaluation, proposed remedial action plan,
16 and remedial action plan, respectively, have
17 been approved by the Administrator.

18 “(F) NATIONAL CONTINGENCY PLAN.—
19 The Administrator shall conform the National
20 Contingency Plan regulations to reflect the pro-
21 cedures stated in this section.

22 “(2) USE OF PRESUMPTIVE REMEDIAL AC-
23 TIONS.—

24 “(A) PROPOSAL TO USE.—In a case in
25 which a presumptive remedial action applies,

1 the Administrator (if the Administrator is con-
2 ducting the remedial action) or the preparer of
3 the remedial action plan may, after conducting
4 a facility evaluation, propose a presumptive re-
5 medial action for the facility, if the Adminis-
6 trator or preparer shows with appropriate docu-
7 mentation that the facility fits the generic clas-
8 sification for which a presumptive remedial ac-
9 tion has been issued and performs an engineer-
10 ing evaluation to demonstrate that the pre-
11 sumptive remedial action can be applied at the
12 facility.

13 “(B) LIMITATION.—The Administrator
14 may not require a potentially responsible party
15 to implement a presumptive remedial action.

16 “(b) REMEDIAL ACTION PLANNING PROCESS.—

17 “(1) IN GENERAL.—The Administrator or a po-
18 tentially responsible party shall prepare and imple-
19 ment a remedial action plan for a facility.

20 “(2) CONTENTS.—A remedial action plan shall
21 consist of—

22 “(A) the results of a facility evaluation, in-
23 cluding any screening analysis performed at the
24 facility;

1 “(B) a discussion of the potentially viable
2 remedies that are considered to be reasonable
3 under section 121(a) and how they balance the
4 factors stated in section 121(a)(1)(C);

5 “(C) a description of the remedial action to
6 be taken;

7 “(D) a description of the facility-specific
8 risk-based evaluation under section 127 and a
9 demonstration that the selected remedial action
10 will satisfy sections 121(a) and 128; and

11 “(E) a realistic schedule for conducting the
12 remedial action, taking into consideration facil-
13 ity-specific factors.

14 “(3) WORK PLAN.—

15 “(A) IN GENERAL.—Prior to preparation
16 of a remedial action plan, the preparer shall de-
17 velop a work plan, including a community infor-
18 mation and participation plan, which generally
19 describes how the remedial action plan will be
20 developed.

21 “(B) SUBMISSION.—A work plan shall be
22 submitted to the Administrator, the State, the
23 community response organization, the local li-
24 brary, and any other public facility designated
25 by the Administrator.

1 “(C) PUBLICATION.—The Administrator
2 or other person that prepares a work plan shall
3 publish in a newspaper of general circulation in
4 the area where the facility is located, and post
5 in conspicuous places in the local community, a
6 notice announcing that the work plan is avail-
7 able for review at the local library and that
8 comments concerning the work plan can be sub-
9 mitted to the preparer of the work plan, the
10 Administrator, the State, or the local commu-
11 nity response organization.

12 “(D) FORWARDING OF COMMENTS.—If
13 comments are submitted to the Administrator,
14 the State, or the community response organiza-
15 tion, the Administrator, State, or community
16 response organization shall forward the com-
17 ments to the preparer of the work plan.

18 “(E) NOTICE OF DISAPPROVAL.—If the
19 Administrator does not approve a work plan,
20 the Administrator shall—

21 “(i) identify to the preparer of the
22 work plan, with specificity, any deficiencies
23 in the submission; and

24 “(ii) require that the preparer submit
25 a revised work plan within a reasonable pe-

1 riod of time, which shall not exceed 90
2 days except in unusual circumstances, as
3 determined by the Administrator.

4 “(4) FACILITY EVALUATION.—

5 “(A) IN GENERAL.—The Administrator (or
6 the preparer of the facility evaluation) shall
7 conduct a facility evaluation at each facility to
8 characterize the risk posed by the facility by
9 gathering enough information necessary to—

10 “(i) assess potential remedial alter-
11 natives, including ascertaining, to the de-
12 gree appropriate, the volume and nature of
13 the contaminants, their location, potential
14 exposure pathways and receptors;

15 “(ii) discern the actual or planned or
16 reasonably anticipated future use of the
17 land and water resources; and

18 “(iii) screen out any uncontaminated
19 areas, contaminants, and potential path-
20 ways from further consideration.

21 “(B) SUBMISSION.—A draft facility eval-
22 uation shall be submitted to the Administrator
23 for approval.

24 “(C) PUBLICATION.—Not later than 30
25 days after submission, or in a case in which the

1 Administrator is preparing the remedial action
2 plan, after the completion of the draft facility
3 evaluation, the Administrator shall publish in a
4 newspaper of general circulation in the area
5 where the facility is located, and post in con-
6 spicuous places in the local community, a notice
7 announcing that the draft facility evaluation is
8 available for review and that comments con-
9 cerning the evaluation can be submitted to the
10 Administrator, the State, and the community
11 response organization.

12 “(D) AVAILABILITY OF COMMENTS.—If
13 comments are submitted to the Administrator,
14 the State, or the community response organiza-
15 tion, the Administrator, State, or community
16 response organization shall make the comments
17 available to the preparer of the facility evalua-
18 tion.

19 “(E) NOTICE OF APPROVAL.—If the Ad-
20 ministrator approves a facility evaluation, the
21 Administrator shall—

22 “(i) notify the community response or-
23 ganization; and

24 “(ii) publish in a newspaper of general
25 circulation in the area where the facility is

1 located, and post in conspicuous places in
2 the local community, a notice of approval.

3 “(F) NOTICE OF DISAPPROVAL.—If the
4 Administrator does not approve a facility eval-
5 uation, the Administrator shall—

6 “(i) identify to the preparer of the fa-
7 cility evaluation, with specificity, any defi-
8 ciencies in the submission; and

9 “(ii) require that the preparer submit
10 a revised facility evaluation within a rea-
11 sonable period of time, which shall not ex-
12 ceed 90 days except in unusual cir-
13 cumstances, as determined by the Adminis-
14 trator.

15 “(5) PROPOSED REMEDIAL ACTION PLAN.—

16 “(A) SUBMISSION.—In a case in which a
17 potentially responsible party prepares a reme-
18 dial action plan, the preparer shall submit the
19 remedial action plan to the Administrator for
20 approval and provide a copy to the local library.

21 “(B) PUBLICATION.—After receipt of the
22 proposed remedial action plan, or in a case in
23 which the Administrator is preparing the reme-
24 dial action plan, after the completion of the re-
25 medial action plan, the Administrator shall

1 cause to be published in a newspaper of general
2 circulation in the area where the facility is lo-
3 cated and posted in other conspicuous places in
4 the local community a notice announcing that
5 the proposed remedial action plan is available
6 for review at the local library and that com-
7 ments concerning the remedial action plan can
8 be submitted to the Administrator, the State,
9 and the community response organization.

10 “(C) AVAILABILITY OF COMMENTS.—If
11 comments are submitted to a State or the com-
12 munity response organization, the State or com-
13 munity response organization shall make the
14 comments available to the preparer of the pro-
15 posed remedial action plan.

16 “(D) HEARING.—The Administrator shall
17 hold a public hearing at which the proposed re-
18 medial action plan shall be presented and public
19 comment received.

20 “(E) APPROVAL.—

21 “(i) IN GENERAL.—The Administrator
22 shall approve a proposed remedial action
23 plan if the plan—

24 “(I) contains the information de-
25 scribed in section 127(b); and

1 “(II) satisfies section 121(a).

2 “(ii) DEFAULT.—If the Administrator
3 fails to issue a notice of disapproval of a
4 proposed remedial action plan in accord-
5 ance with subparagraph (G) within 90
6 days after the proposed plan is submitted,
7 the plan shall be considered to be approved
8 and its implementation fully authorized.

9 “(F) NOTICE OF APPROVAL.—If the Ad-
10 ministrator approves a proposed remedial action
11 plan, the Administrator shall—

12 “(i) notify the community response or-
13 ganization; and

14 “(ii) publish in a newspaper of general
15 circulation in the area where the facility is
16 located, and post in conspicuous places in
17 the local community, a notice of approval.

18 “(G) NOTICE OF DISAPPROVAL.—If the
19 Administrator does not approve a proposed re-
20 medial action plan, the Administrator shall—

21 “(i) inform the preparer of the pro-
22 posed remedial action plan, with specific-
23 ity, of any deficiencies in the submission;
24 and

1 “(ii) request that the preparer submit
2 a revised proposed remedial action plan
3 within a reasonable time, which shall not
4 exceed 90 days except in unusual cir-
5 cumstances, as determined by the Adminis-
6 trator.

7 “(6) IMPLEMENTATION OF REMEDIAL ACTION
8 PLAN.—A remedial action plan that has been ap-
9 proved or is considered to be approved under para-
10 graph (5) shall be implemented in accordance with
11 the schedule set forth in the remedial action plan.

12 “(7) REMEDIAL DESIGN.—

13 “(A) SUBMISSION.—A remedial design
14 shall be submitted to the Administrator, or in
15 a case in which the Administrator is preparing
16 the remedial action plan, shall be completed by
17 the Administrator.

18 “(B) PUBLICATION.—After receipt by the
19 Administrator of (or completion by the Admin-
20 istrator of) the remedial design, the Adminis-
21 trator shall—

22 “(i) notify the community response or-
23 ganization; and

24 “(ii) cause a notice of submission or
25 completion of the remedial design to be

published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

“(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

“(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

“(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

“(i) notify the community response organization; and

“(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

“(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall—

“(i) identify with specificity any deficiencies in the submission; and

1 “(ii) allow the preparer submitting a
2 remedial design a reasonable time (which
3 shall not exceed 90 days except in unusual
4 circumstances, as determined by the Ad-
5 ministrator) in which to submit a revised
6 remedial design.

7 “(c) JUDICIAL REVIEW.—

8 “(1) FINAL ACTION.—Notwithstanding any
9 other provision of this Act or any other law, an ap-
10 proval or disapproval of a remedial action plan de-
11 scribed in paragraph (2), shall be final action of the
12 Administrator subject to judicial review in United
13 States district court.

14 “(2) APPLICATION AND SUBSECTION.—A reme-
15 dial action plan is described in this paragraph if—

16 “(A) the plan is approved or disapproved
17 after the date of enactment of this section; and

18 “(B) the capital cost of the remedial action
19 under the plan is projected to cost more than
20 \$15,000,000 for any operating unit that is the
21 subject of a separately enforceable remedial ac-
22 tion plan or more than \$27,000,000 for an en-
23 tire facility.

24 “(d) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

1 “(1) NOTICE OF SIGNIFICANT DEVIATION.—If
2 the Administrator determines that the implementa-
3 tion of the remedial action plan has deviated signifi-
4 cantly from the plan, the Administrator shall provide
5 the implementing party a notice that requires the
6 implementing party, within a reasonable period of
7 time specified by the Administrator, to—

8 “(A) comply with the terms of the remedial
9 action plan; or

10 “(B) submit a notice for modifying the
11 plan.

12 “(2) FAILURE TO COMPLY.—

13 “(A) CLASS ONE ADMINISTRATIVE PEN-
14 ALTY.—In issuing a notice under paragraph
15 (1), the Administrator may impose a class one
16 administrative penalty consistent with section
17 109(a).

18 “(B) ADDITIONAL ENFORCEMENT MEAS-
19 URES.—If the implementing party fails to either
20 comply with the plan or submit a proposed
21 modification, the Administrator may pursue all
22 additional appropriate enforcement measures
23 pursuant to this Act.

24 “(e) MODIFICATIONS TO REMEDIAL ACTION.—

1 “(1) DEFINITION.—In this subsection, the term
2 ‘major modification’ means a modification that—

3 “(A) fundamentally alters the interpreta-
4 tion of site conditions at the facility;

5 “(B) fundamentally alters the interpreta-
6 tion of sources of risk at the facility;

7 “(C) fundamentally alters the scope of pro-
8 tection to be achieved by the selected remedial
9 action;

10 “(D) fundamentally alters the performance
11 of the selected remedial action; or

12 “(E) delays the completion of the remedy
13 by more than 180 days.

14 “(2) MAJOR MODIFICATIONS.—

15 “(A) IN GENERAL.—If the Administrator
16 or other implementing party proposes a major
17 modification to the plan, the Administrator or
18 other implementing party shall demonstrate
19 that—

20 “(i) the major modification constitutes
21 the most cost-effective remedial alternative
22 that is technologically feasible and is not
23 unreasonably costly; and

24 “(ii) that the revised remedy will con-
25 tinue to satisfy section 121(a).

1 “(B) NOTICE AND COMMENT.—The Ad-
2 ministrator shall provide the implementing
3 party, the community response organization,
4 and the local community notice of the proposed
5 major modification and at least 30 days’ oppor-
6 tunity to comment on any such proposed modi-
7 fication.

8 “(C) PROMPT ACTION.—At the end of the
9 comment period, the Administrator shall
10 promptly approve or disapprove the proposed
11 modification and order implementation of the
12 modification in accordance with any reasonable
13 and relevant requirements that the Adminis-
14 trator may specify.

15 “(3) MINOR MODIFICATIONS.—Nothing in this
16 section modifies the discretionary authority of the
17 Administrator to make a minor modification of a
18 record of decision or remedial action plan to conform
19 to the best science and engineering, the require-
20 ments of this Act, or changing conditions at a facil-
21 ity.”.

22 **SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND**
23 **DELISTING.**

24 Title I of the Comprehensive Environmental Re-
25 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.), as amended by section 404, is
2 amended by adding at the end the following:

3 **“SEC. 130. COMPLETION OF PHYSICAL CONSTRUCTION AND**
4 **DELISTING.**

5 “(a) IN GENERAL.—

6 “(1) PROPOSED NOTICE OF COMPLETION AND
7 PROPOSED DELISTING.—Not later than 60 days
8 after the completion by the Administrator of phys-
9 ical construction necessary to implement a response
10 action at a facility, or not later than 60 days after
11 receipt of a notice of such completion from the im-
12 plementing party, the Administrator shall publish a
13 notice of completion and proposed delisting of the
14 facility from the National Priorities List in the Fed-
15 eral Register and in a newspaper of general circula-
16 tion in the area where the facility is located.

17 “(2) PHYSICAL CONSTRUCTION.—For the pur-
18 poses of paragraph (1), physical construction nec-
19 essary to implement a response action at a facility
20 shall be considered to be complete when—

21 “(A) construction of all systems, struc-
22 tures, devices, and other components necessary
23 to implement a response action for the entire
24 facility has been completed in accordance with
25 the remedial design plan; or

1 “(B) no construction, or no further con-
2 struction, is expected to be undertaken.

3 “(3) COMMENTS.—The public shall be provided
4 30 days in which to submit comments on the notice
5 of completion and proposed delisting.

6 “(4) FINAL NOTICE.—Not later than 60 days
7 after the end of the comment period, the Adminis-
8 trator shall—

9 “(A) issue a final notice of completion and
10 delisting or a notice of withdrawal of the pro-
11 posed notice until the implementation of the re-
12 medial action is determined to be complete; and

13 “(B) publish the notice in the Federal
14 Register and in a newspaper of general circula-
15 tion in the area where the facility is located.

16 “(5) FAILURE TO ACT.—If the Administrator
17 fails to publish a notice of withdrawal within the 60-
18 day period described in paragraph (4)—

19 “(A) the remedial action plan shall be
20 deemed to have been completed; and

21 “(B) the facility shall be delisted by oper-
22 ation of law.

23 “(6) EFFECT OF DELISTING.—The delisting of
24 a facility shall have no effect on—

1 “(A) liability allocation requirements or
2 cost-recovery provisions otherwise provided in
3 this Act;

4 “(B) any liability of a potentially respon-
5 sible party or the obligation of any person to
6 provide continued operation and maintenance;

7 “(C) the authority of the Administrator to
8 make expenditures from the Fund relating to
9 the facility; or

10 “(D) the enforceability of any consent
11 order or decree relating to the facility.

12 “(7) FAILURE TO MAKE TIMELY DIS-
13 APPROVAL.—The issuance of a final notice of com-
14 pletion and delisting or of a notice of withdrawal
15 within the time required by subsection (a)(3) con-
16 stitutes a nondiscretionary duty within the meaning
17 of section 310(a)(2).

18 “(b) CERTIFICATION.—A final notice of completion
19 and delisting shall include a certification by the Adminis-
20 trator that the facility has met all of the requirements of
21 the remedial action plan (except requirements for contin-
22 ued operation and maintenance).

23 “(c) FUTURE USE OF A FACILITY.—

24 “(1) FACILITY AVAILABLE FOR UNRESTRICTED
25 USE.—If, after completion of physical construction,

1 a facility is available for unrestricted use and there
2 is no need for continued operation and maintenance,
3 the potentially responsible parties shall have no fur-
4 ther liability under any Federal, State, or local law
5 (including any regulation) for remediation at the fa-
6 cility, unless the Administrator determines, based on
7 new and reliable factual information about the facil-
8 ity, that the facility does not satisfy section 121(a).

9 “(2) FACILITY NOT AVAILABLE FOR ANY
10 USE.—If, after completion of physical construction,
11 a facility is not available for any use or there are
12 continued operation and maintenance requirements
13 that preclude use of the facility, the Administrator
14 shall—

15 “(A) review the status of the facility every
16 7 years; and

17 “(B) require additional remedial action at
18 the facility if the Administrator determines,
19 after notice and opportunity for hearing, that
20 the facility does not satisfy section 121(a).

21 “(3) FACILITIES AVAILABLE FOR RESTRICTED
22 USE.—The Administrator may determine that a fa-
23 cility or portion of a facility is available for re-
24 stricted use while a response action is under way or
25 after physical construction has been completed. The

1 Administrator shall make a determination that
2 uncontaminated portions of the facility are available
3 for unrestricted use when such use would not inter-
4 fere with ongoing operations and maintenance activi-
5 ties or endanger human health or the environment.

6 “(d) OPERATION AND MAINTENANCE.—The need to
7 perform continued operation and maintenance at a facility
8 shall not delay delisting of the facility or issuance of the
9 certification if performance of operation and maintenance
10 is subject to a legally enforceable agreement, order, or de-
11 cree.

12 “(e) CHANGE OF USE OF FACILITY.—

13 “(1) PETITION.—Any person may petition the
14 Administrator to change the use of a facility de-
15 scribed in subsection (c) (2) or (3) from that which
16 was the basis of the remedial action plan.

17 “(2) GRANT.—The Administrator may grant a
18 petition under paragraph (1) if the petitioner agrees
19 to implement any additional remedial actions that
20 the Administrator determines are necessary to con-
21 tinue to satisfy section 121(a), considering the dif-
22 ferent use of the facility.

23 “(3) RESPONSIBILITY FOR RISK.—When a peti-
24 tion has been granted under paragraph (2), the per-
25 son requesting the change in use of the facility shall

1 be responsible for all risk associated with altering
 2 the facility and all costs of implementing any nec-
 3 essary additional remedial actions.”.

4 **SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY**
 5 **INVOLVED IN REMEDY SELECTION.**

6 Title I of the Comprehensive Environmental Re-
 7 sponse, Compensation, and Liability Act of 1980 (42
 8 U.S.C. 9601 et seq.), as amended by section 405, is
 9 amended by adding at the end the following:

10 **“SEC. 131. TRANSITION RULES FOR FACILITIES INVOLVED**
 11 **IN REMEDY SELECTION ON DATE OF ENACT-**
 12 **MENT.**

13 “(a) NO RECORD OF DECISION.—

14 “(1) OPTION.—In the case of a facility or oper-
 15 able unit that, as of the date of enactment of this
 16 section, is the subject of a remedial investigation
 17 and feasibility study (whether completed or incom-
 18 plete), the potentially responsible parties or the Ad-
 19 ministrator may elect to follow the remedial action
 20 plan process stated in section 129 rather than the
 21 remedial investigation and feasibility study and
 22 record of decision process under regulations in effect
 23 on the date of enactment of this section that would
 24 otherwise apply if the requesting party notifies the
 25 Administrator and other potentially responsible par-

1 ties of the election not later than 90 days after the
2 date of enactment of this section.

3 “(2) SUBMISSION OF FACILITY EVALUATION.—

4 In a case in which the potentially responsible parties
5 have or the Administrator has made an election
6 under subsection (a), the potentially responsible par-
7 ties shall submit the proposed facility evaluation
8 within 180 days after the date on which notice of
9 the election is given.

10 “(b) REMEDY REVIEW BOARDS.—

11 “(1) ESTABLISHMENT.—Not later than 60 days
12 after the date of enactment of this section, the Ad-
13 ministrator shall establish 1 or more remedy review
14 boards (referred to in this subsection as a ‘remedy
15 review board’), each consisting of at least 3 inde-
16 pendent technical experts, to review petitions under
17 paragraphs (3) and (4).

18 “(2) GENERAL PROCEDURE.—

19 “(A) COMPLETION OF REVIEW.—The re-
20 view of a petition submitted to a remedy review
21 board shall be completed not later than 180
22 days after the receipt of the petition unless the
23 Administrator, for good cause, grants additional
24 time.

1 “(B) COSTS.—All costs of review by a rem-
2 edy review board shall be borne by the peti-
3 tioner.

4 “(C) DECISIONS.—At the completion of
5 the 180-day review period, a remedy review
6 board shall issue a written decision including
7 responses to all comments submitted during the
8 review process with regard to a petition.

9 “(D) OPPORTUNITY FOR COMMENT AND
10 MEETINGS.—In reviewing a petition, a remedy
11 review board shall provide an opportunity for all
12 interested parties, including representatives of
13 the State and local community in which the fa-
14 cility is located, to comment on the petition
15 and, if requested, to meet with the remedy re-
16 view board.

17 “(E) REVIEW BY THE ADMINISTRATOR.—

18 “(i) IN GENERAL.—The Administrator
19 shall have final review of any decision of a
20 remedy review board.

21 “(ii) STANDARD OF REVIEW.—In con-
22 ducting a review of a decision of a remedy
23 review board, the Administrator shall ac-
24 cord substantial weight to the remedy re-
25 view board’s decision.

1 “(iii) REJECTION OF DECISION.—Any
2 determination to reject a remedy review
3 board’s decision must be approved by the
4 Administrator or the Assistant Adminis-
5 trator for Solid Waste and Emergency Re-
6 sponse.

7 “(F) DECISION OF THE BOARD.—A deci-
8 sion of a remedy review board decision under
9 subparagraph (B) and the Administrator’s re-
10 view of a decision under subparagraph (E) shall
11 be subject to judicial review under section
12 113(h).

13 “(3) CONSTRUCTION NOT BEGUN.—

14 “(A) PETITION.—In the case of a facility
15 or operable unit with respect to which a record
16 of decision has been signed but construction has
17 not yet begun prior to the date of enactment of
18 this section, the implementor of the record of
19 decision may file a petition with a remedy re-
20 view board not later than 90 days after the date
21 of enactment of this section to determine
22 whether an alternate remedy under section 127
23 should apply to the facility or operable unit.

24 “(B) CRITERIA FOR APPROVAL.—Subject
25 to subparagraph (C), a remedy review board

1 shall approve a petition described in subpara-
2 graph (A) if—

3 “(i) the alternative remedial action
4 proposed in the petition satisfies section
5 121(a);

6 “(ii) the alternative remedial action
7 achieves a cost savings of at least
8 \$1,500,000; or

9 “(iii) implementation of the alter-
10 native remedial action will not result in a
11 substantial delay in the implementation of
12 a remedial action.

13 “(C) REVIEW OF COMMENTS.—A remedy
14 review board may reject or modify a petition
15 under subparagraph (A), even though the peti-
16 tion meets the criteria stated in subparagraph
17 (B), based on a review of comments submitted
18 by persons other than the petitioner.

19 “(D) CONTENTS OF PETITION.—A petition
20 described in subparagraph (A) shall rely on risk
21 assessment data that were available prior to is-
22 suance of the record of decision but shall con-
23 sider the actual or planned or reasonably antici-
24 pated future use of the land and water re-
25 sources.

1 “(E) INCORRECT DATA.—Notwithstanding
2 subparagraph (B) and (D), a remedy review
3 board may approve a petition if the petitioner
4 demonstrates that technical data generated sub-
5 sequent to the issuance of the record of decision
6 indicates that the decision was based on faulty
7 or incorrect information.

8 “(4) ADDITIONAL CONSTRUCTION.—

9 “(A) PETITION.—In the case of a facility
10 or operable unit with respect to which a record
11 of decision has been signed and construction
12 has begun prior to the date of enactment of this
13 section, but for which additional construction or
14 long-term operation and maintenance activities
15 are anticipated, the implementor of the record
16 of decision may file a petition with a remedy re-
17 view board within 90 days after the date of en-
18 actment of this section to determine whether an
19 alternative remedial action should apply to the
20 facility or operable unit.

21 “(B) CRITERIA FOR APPROVAL.—Subject
22 to subparagraph (C), a remedy review board
23 shall approve a petition described in subpara-
24 graph (A) if—

1 “(i) the alternative remedial action
2 proposed in the petition is protective of
3 human health and the environment in ac-
4 cordance with the standards of section
5 121, as in effect prior to the date of enact-
6 ment of this section;

7 “(ii) implementation of the alternative
8 remedial action will not result in a sub-
9 stantial delay in the implementation of a
10 remedial action; and

11 “(iii)(I) the petitioner demonstrates
12 that the selected remedial action is incon-
13 sistent with the most recent version of any
14 guidance issued by the Administrator prior
15 to the date of enactment of this section
16 concerning the selection or implementation
17 of any remedial action; or

18 “(II) the alternative remedial action
19 employs a phased remedial approach
20 which, if successful would preclude the
21 need for full implementation of the selected
22 remedial action.

23 “(C) REVIEW OF COMMENTS.—A remedy
24 review board may reject or modify a petition
25 under subparagraph (A), even though the peti-

tion meets the criteria stated in subparagraph (B), based on a review of comments submitted by persons other than the petitioner.

“(D) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

“(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.”.

SEC. 407. JUDICIAL REVIEW.

(a) REVIEW OF CERTAIN ACTIONS.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by adding at the end the following:

“(6) An action under section 129(c).”.

(b) STAY.—Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(b)) is amended by adding at the

1 end the following: “In the case of a challenge under sec-
2 tion 113(h)(6), the court may stay the implementation or
3 initiation of the challenged actions pending judicial resolu-
4 tion of the matter.”.

5 **SEC. 408. NATIONAL PRIORITIES LIST.**

6 (a) REVISION OF NATIONAL CONTINGENCY PLAN.—

7 (1) AMENDMENTS.—Section 105 of the Com-
8 prehensive Environmental Response, Compensation,
9 and Liability Act of 1980 (42 U.S.C. 9605) is
10 amended—

11 (A) in subsection (a)(8) by adding at the
12 end the following:

13 “(C) provision that in listing a facility on the
14 National Priorities List, the Administrator shall not
15 include any parcel of real property at which no re-
16 lease has actually occurred, but to which a released
17 hazardous substance, pollutant, or contaminant has
18 migrated in ground water that has moved through
19 subsurface strata from another parcel of real estate
20 at which the release actually occurred, unless—

21 “(i) the ground water is in use as a public
22 drinking water supply or was in such use at the
23 time of the release; and

24 “(ii) the owner or operator of the facility
25 is liable, or is affiliated with any other person

that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.”; and

(B) by adding at the end the following:

“(h) LISTING OF PARTICULAR PARCELS.—

“(1) DEFINITION.—In subsection (a)(8)(C) and paragraph (2) of this subsection, the term ‘parcel of real property’ means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

“(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) shall be construed to limit the Administrator’s authority under section 104 to obtain access to and undertake response actions at any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in the ground water.”.

(2) REVISION OF NATIONAL PRIORITIES LIST.—

The President shall revise the National Priorities

1 List to conform with the amendment made by para-
 2 graph (1) not later than 180 days of the date of en-
 3 actment of this Act.

4 **TITLE V—LIABILITY**

5 **SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.**

6 (a) IN GENERAL.—Section 107 of the Comprehensive
 7 Environmental Response, Compensation, and Liability Act
 8 of 1980 (42 U.S.C. 9607), as amended by section 306(b),
 9 is amended by adding at the end the following:

10 “(r) 10-PERCENT LIMITATION FOR MUNICIPAL
 11 SOLID WASTE AND SEWAGE SLUDGE.—No person or
 12 group of persons (other than the United States or a de-
 13 partment, agency, or instrumentality of the United States)
 14 shall be liable for more than 10 percent of total response
 15 costs at a facility listed on the National Priorities List,
 16 in the aggregate, incurred after the date of enactment of
 17 this subsection if—

18 “(1) the person is liable solely under subpara-
 19 graph (C) or (D) of subsection (a)(1); and

20 “(2) the arrangement for disposal, treatment,
 21 or transport for disposal or treatment, or the accept-
 22 ance for transport for disposal or treatment, in-
 23 volved only municipal solid waste or sewage sludge.

24 “(s) DE MINIMIS CONTRIBUTOR EXEMPTION.—In
 25 the case of a vessel or facility that is not owned by the

1 United States and is listed on the National Priorities List,
2 no person described in subparagraph (C) or (D) of sub-
3 section (a)(1) (other than the United States or any depart-
4 ment, agency, or instrumentality of the United States)
5 shall be liable to the United States or to any other person
6 (including liability for contribution) under Federal or
7 State law for any costs under this section incurred after
8 the date of enactment of this subsection, if no activity spe-
9 cifically attributable to the person resulted in—

10 “(1) the disposal or treatment of more than 1
11 percent of the volume of material containing a haz-
12 ardous substance at the vessel or facility prior to
13 December 11, 1980; or

14 “(2) the disposal or treatment of not more than
15 200 pounds or 110 gallons of material containing
16 hazardous substances at the vessel or facility prior
17 to January 1, 1996, or such greater or lesser
18 amount as the Administrator may determine by reg-
19 ulation.

20 “(t) SUCCESSOR LIABILITY.—The liability of a per-
21 son that has purchased assets from another person that
22 is otherwise liable under this section shall be determined
23 in accordance with the law of the State in which the vessel
24 or facility is located.”.

1 (b) CONFORMING AMENDMENT.—Section 107(a) is
 2 amended by striking “of this section” and inserting “, the
 3 limitation stated in subsection (r), and the exemption stat-
 4 ed in subsection (s)”.

5 (c) EFFECTIVE DATE AND TRANSITION RULES.—
 6 The amendments made by this section—

7 (1) shall take effect with respect to an action
 8 under section 106, 107, or 113 of the Comprehen-
 9 sive Environmental Response, Compensation, and
 10 Liability Act of 1980 (42 U.S.C. 9606, 9607, and
 11 9613) that becomes final on or after the date of en-
 12 actment of this Act; but

13 (2) shall not apply to an action brought by any
 14 person under section 107 or 113 of that Act (42
 15 U.S.C. 9607 and 9613) for costs or damages in-
 16 curred by the person before the date of enactment
 17 of this Act.

18 **SEC. 502. CONTRIBUTION FROM THE FUND FOR CERTAIN**
 19 **RETROACTIVE LIABILITY.**

20 Section 112 of the Comprehensive Environmental Re-
 21 sponse, Compensation, and Liability Act of 1980 (42
 22 U.S.C. 9612) is amended by adding at the end the follow-
 23 ing:

24 “(g) CONTRIBUTION FROM THE FUND FOR CERTAIN
 25 RETROACTIVE LIABILITY.—

1 “(1) COMPLETION OF OBLIGATIONS.—A person
2 that is subject to an administrative order issued
3 under section 106 or has entered into a settlement
4 decree with the United States or a State as of the
5 date of enactment of this subsection shall complete
6 the person’s obligations under the order or settle-
7 ment decree.

8 “(2) CONTRIBUTION.—A person described in
9 paragraph (1) shall receive contribution from the
10 Fund for any portion of the costs incurred for the
11 performance of the response action after the date of
12 enactment of this subsection—

13 “(A) if the person is not liable for such
14 costs by reason of the de minimis contributor
15 exemption under section 107(s); or

16 “(B) if and to the extent the person’s allo-
17 cated share, as determined under section 503,
18 is funded by the orphan share under section
19 503(1)(2)(B).

20 “(3) APPLICATION FOR CONTRIBUTION.—

21 “(A) IN GENERAL.—Contribution under
22 this section shall be made upon receipt by the
23 Administrator of an application from the person
24 requesting contribution.

1 “(B) PERIODIC APPLICATIONS.—Applica-
2 tion may be made no more frequently than
3 every 6 months after such payments are made
4 or such costs are incurred, commencing 6
5 months after the enactment of this subsection.

6 “(4) REGULATIONS.—Contribution shall be
7 made in accordance with such regulations as the Ad-
8 ministrator shall issue within 180 days after the
9 date of enactment of this section.

10 “(5) DOCUMENTATION.—The regulations under
11 paragraph (4) shall, at a minimum, require that an
12 application for contribution contain such documenta-
13 tion of costs and expenditures as the Administrator
14 considers necessary to ensure compliance with this
15 subsection.

16 “(6) EXPEDITION.—The Administrator shall
17 develop and implement such procedures as may be
18 necessary to provide contribution to such persons in
19 an expeditious manner, but in no case shall a con-
20 tribution be made later than 1 year after submission
21 of an application under this subsection.

22 “(7) CONSISTENCY WITH NATIONAL CONTIN-
23 GENCY PLAN.—No contribution shall be made under
24 this subsection unless the Administrator determines

1 that such costs are consistent with the National
2 Contingency Plan.”.

3 **SEC. 503. ALLOCATION OF LIABILITY FOR CERTAIN FACILI-**
4 **TIES.**

5 Title I of the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9601 et seq.), as amended by section 406, is
8 amended by adding at the end the following:

9 **“SEC. 132. ALLOCATION OF LIABILITY FOR CERTAIN FA-**
10 **CILITIES.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) ALLOCATED SHARE.—The term ‘allocated
13 share’ means the percentage of liability assigned to
14 a potentially responsible party by the allocator in an
15 allocation report under section 132(j)(6).

16 “(2) ALLOCATION PARTY.—The term ‘allocation
17 party’ means a party, named on a list of parties that
18 will be subject to the allocation process under this
19 section, issued by an allocator under subsection
20 (g)(3)(A).

21 “(3) ALLOCATOR.—The term ‘allocator’ means
22 an allocator retained to conduct an allocation for a
23 facility under subsection (f)(1).

24 “(4) MANDATORY ALLOCATION FACILITY.—The
25 term ‘mandatory allocation facility’ means—

1 “(A) a non-federally owned vessel or facil-
2 ity listed on the National Priorities List with
3 respect to which response costs are incurred
4 after the date of enactment of this section, and
5 at which one or more potentially responsible
6 parties are liable or potentially liable for status
7 or conduct after December 11, 1980;

8 “(B) a non-federally owned vessel or facil-
9 ity listed on the National Priorities List with
10 respect to which response costs are incurred
11 after the date of enactment of this section, and
12 with respect to which no person is liable or po-
13 tentially liable pursuant to section 107(a)(1)
14 (C) or (D) for conduct prior to December 11,
15 1980;

16 “(C) a federally owned vessel or facility
17 listed on the National Priorities List with re-
18 spect to which response costs are incurred after
19 the date of enactment of this section, and with
20 respect to which 1 or more potentially respon-
21 sible parties (other than a department, agency,
22 or instrumentality of the United States) are lia-
23 ble or potentially liable for status or conduct
24 after December 11, 1980; and

1 “(D) a federally owned vessel or facility
2 listed on the National Priorities List with re-
3 spect to which response costs are incurred after
4 the date of enactment of this section, and with
5 respect to which one or more of the potentially
6 responsible parties is not a department, agency,
7 or instrumentality of the United States and
8 with respect to which no person is liable or po-
9 tentially liable pursuant to section 107(a)(1)
10 (C) or (D) for conduct prior to December 11,
11 1980.

12 “(5) ORPHAN SHARE.—The term ‘orphan
13 share’ means the total of the allocated shares deter-
14 mined by the allocator under section 132(l).

15 “(b) ALLOCATIONS OF LIABILITY.—

16 “(1) MANDATORY ALLOCATIONS.—For each
17 mandatory allocation facility involving 2 or more po-
18 tentially responsible parties (including 1 or more po-
19 tentially responsible parties that are qualified for de
20 minimis contributor exemption under section
21 107(s)), the Administrator shall conduct the alloca-
22 tion process under this section.

23 “(2) REQUESTED ALLOCATIONS.—For a facility
24 (other than a mandatory allocation facility) involving
25 2 or more potentially responsible parties, the Admin-

1 istrator shall conduct the allocation process under
2 this section if the allocation is requested in writing
3 by a potentially responsible party that has—

4 “(A) incurred response costs with respect
5 to a response action; or

6 “(B) resolved any liability to the United
7 States with respect to a response action in
8 order to assist in allocating shares among po-
9 tentially responsible parties.

10 “(3) PERMISSIVE ALLOCATIONS.—For any fa-
11 cility (other than a mandatory allocation facility or
12 a facility with respect to which a request is made
13 under paragraph (2)) involving 2 or more potentially
14 responsible parties, the Administrator may conduct
15 the allocation process under this section if the Ad-
16 ministrator considers it to be appropriate to do so.

17 “(4) ORPHAN SHARE.—An allocation performed
18 at a vessel or facility identified under subsection (b)
19 (2) or (3) shall not require payment of an orphan
20 share under subsection (l) or reimbursement under
21 subsection (t).

22 “(5) EXCLUDED FACILITIES.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), for purposes of the alloca-
25 tion process only, this section does not apply to

1 a response action at a mandatory allocation fa-
2 cility for which there was in effect as of the
3 date of enactment of this section, a settlement,
4 decree, or order that determines the liability
5 and allocated shares of all potentially respon-
6 sible parties with respect to the response action.

7 “(B) AVAILABILITY OF ORPHAN SHARE.—

8 For any mandatory allocation facility that is
9 otherwise excluded by subparagraph (A) and for
10 which there was not in effect as of the date of
11 enactment of this section a final judicial order
12 that determined the liability of all parties to the
13 action for response costs incurred after the date
14 of enactment of this section, an allocation shall
15 be conducted for the sole purpose of determin-
16 ing the availability of orphan share funding
17 pursuant to subsection (l)(2) for any response
18 costs incurred after the date of enactment of
19 this section.

20 “(6) SCOPE OF ALLOCATIONS.—An allocation

21 under this section shall apply to—

22 “(A) response costs incurred after the date
23 of enactment of this section, with respect to a
24 mandatory allocation facility described in sub-
25 section (a)(3) (A), (B), (C), or (D); and

1 “(B) response costs incurred at a facility
2 that is the subject of a requested or permissive
3 allocation under subsection (b) (2) or (3).

4 “(7) ORPHAN SHARE FACILITY.—Any non-fed-
5 erally owned vessel or facility that is listed on the
6 National Priorities List at which at least 1 person
7 is liable or potentially liable under section 107(a)(1)
8 (C) or (D) for conduct prior to December 11, 1980,
9 and at which no person is liable or potentially liable
10 for status or conduct after December 11, 1980, shall
11 be considered to be an orphan share facility, and all
12 response costs incurred at the vessel or facility after
13 the date of enactment of this section shall be paid
14 by the orphan share.

15 “(8) OTHER MATTERS.—This section shall not
16 limit or affect—

17 “(A) the obligation of the Administrator to
18 conduct the allocation process for a response
19 action at a facility that has been the subject of
20 a partial or expedited settlement with respect to
21 a response action that is not within the scope
22 of the allocation;

23 “(B) the ability of any person to resolve
24 any liability at a facility to any other person at

1 any time before initiation or completion of the
 2 allocation process, subject to subsection (1)(3);

3 “(C) the validity, enforceability, finality, or
 4 merits of any judicial or administrative order,
 5 judgment, or decree, issued prior to the date of
 6 enactment of this section with respect to liabil-
 7 ity under this Act; or

8 “(D) the validity, enforceability, finality, or
 9 merits of any preexisting contract or agreement
 10 relating to any allocation of responsibility or
 11 any indemnity for, or sharing of, any response
 12 costs under this Act.

13 “(c) MORATORIUM ON LITIGATION AND ENFORCE-
 14 MENT.—

15 “(1) IN GENERAL.—No person may assert a
 16 claim for recovery of a response cost or contribution
 17 toward a response cost (including a claim for insur-
 18 ance proceeds) under this Act or any other Federal
 19 or State law in connection with a response action—

20 “(A) for which an allocation is required to
 21 be performed under subsection (b)(1); or

22 “(B) for which the Administrator has initi-
 23 ated the allocation process under this section,
 24 until the date that is 120 days after the date of issu-
 25 ance of a report by the allocator under subsection

1 (j)(6) or, if a second or subsequent report is issued
2 under subsection (q), the date of issuance of the sec-
3 ond or subsequent report.

4 “(2) PENDING ACTIONS OR CLAIMS.—If a claim
5 described in paragraph (1) is pending on the date of
6 enactment of this section or on initiation of an allo-
7 cation under this section, the portion of the claim
8 pertaining to response costs that are the subject of
9 the allocation shall be stayed until the date that is
10 120 days after the date of issuance of a report by
11 the allocator under subsection (j)(6) or, if a second
12 or subsequent report is issued under subsection (q),
13 the date of issuance of the second or subsequent re-
14 port, unless the court determines that a stay would
15 result in manifest injustice.

16 “(3) TOLLING OF PERIOD OF LIMITATION.—

17 “(A) BEGINNING OF TOLLING.—Any appli-
18 cable period of limitation with respect to a
19 claim subject to paragraph (1) shall be tolled
20 beginning on the earlier of—

21 “(i) the date of listing of the facility
22 on the National Priorities List if the list-
23 ing occurs after the date of enactment of
24 this section; or

1 “(ii) the date of initiation of the allo-
2 cation process under this section.

3 “(B) END OF TOLLING.—A period of limi-
4 tation shall be tolled under subparagraph (A)
5 until the date that is 180 days after the date
6 of issuance of a report by the allocator under
7 subsection (j)(6), or of a second or subsequent
8 report under subsection (q).

9 “(4) LATER ACTIONS.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), until the date that is 180
12 days after the date of issuance of a report by
13 the allocator under subsection (j)(6) or of a sec-
14 ond or subsequent report under subsection (q),
15 the Administrator shall not issue an order
16 under section 106 after the date of enactment
17 of this section in connection with a response ac-
18 tion for which an allocation is required to be
19 performed under subsection (b)(1) to any party
20 that, based on the initial list of parties compiled
21 pursuant to subsection (d)(5) appears to be en-
22 titled to full orphan share funding under sec-
23 tion (l)(2)(B).

24 “(B) EMERGENCIES.—Subparagraph (A)
25 does not preclude an order requiring the per-

1 formance of a removal action that is necessary
2 to address an emergency at a facility.

3 “(C) SUBSEQUENT ALLOCATION RE-
4 PORT.—If, after the date of enactment of this
5 section, the Administrator issues an order
6 under section 106 to a party that the allocator
7 subsequently determines is entitled to full fund-
8 ing for the party’s allocated share pursuant to
9 section (l)(2)(B)—

10 “(i) all response costs incurred by the
11 party after the date of enactment of this
12 section shall be reimbursed; and

13 “(ii) the party’s obligations under the
14 order shall cease 90 days after the issu-
15 ance of the allocator’s report under sub-
16 section (j)(6) or a second report under
17 subsection (q).

18 “(5) RETAINED AUTHORITY.—Except as spe-
19 cifically provided in this section, this section does
20 not affect the authority of the Administrator to—

21 “(A) exercise the powers conferred by sec-
22 tion 103, 104, 105, 106, or 122;

23 “(B) commence an action against a party
24 if there is a contemporaneous filing of a judicial

1 consent decree resolving the liability of the
2 party;

3 “(C) file a proof of claim or take other ac-
4 tion in a proceeding under title 11, United
5 States Code; or

6 “(D) require implementation of a response
7 action at an allocation facility during the con-
8 duct of the allocation process.

9 “(d) INITIATION OF ALLOCATION PROCESS.—

10 “(1) RESPONSIBLE PARTY SEARCH.—For each
11 facility described in paragraph (2), the Adminis-
12 trator shall initiate the allocation process as soon as
13 practicable by commencing a comprehensive search
14 for all potentially responsible parties with respect to
15 the facility under authority of section 104.

16 “(2) FACILITIES.—The Administrator shall ini-
17 tiate the allocation process for each—

18 “(A) mandatory allocation facility;

19 “(B) facility for which a request for alloca-
20 tion is made under subsection (b)(2); and

21 “(C) facility that the Administrator consid-
22 ers to be appropriate for allocation under sub-
23 section (b)(3).

1 “(3) TIME LIMIT.—The Administrator shall ini-
2 tiate the allocation process for a facility not later
3 than the earlier of—

4 “(A) the date of completion of the facility
5 evaluation or remedial investigation for the fa-
6 cility; or

7 “(B) the date that is 60 days after the
8 date of selection of a removal action.

9 “(4) SUBMISSION OF INFORMATION AT ALLOCA-
10 TION FACILITIES.—Any person may submit informa-
11 tion to the Administrator concerning a potentially
12 responsible party for a facility that is subject to a
13 search, and the Administrator shall consider the in-
14 formation in carrying out the search.

15 “(5) INITIAL LIST OF PARTIES.—

16 “(A) IN GENERAL.—As soon as practicable
17 after initiation of an allocation process for a fa-
18 cility, the Administrator shall publish, in ac-
19 cordance with section 117(d), a list of all poten-
20 tially responsible parties identified for a facility.

21 “(B) TIME LIMIT.—The Administrator
22 shall publish a list under paragraph (1) not
23 later than 120 days after the commencement of
24 a comprehensive search.

1 “(C) COPY OF LIST.—The Administrator
2 shall provide each person named on a list of po-
3 tentially responsible parties with—

4 “(i) a copy of the list; and

5 “(ii) the names of not less than 25
6 neutral parties—

7 “(I) who are not employees of the
8 United States;

9 “(II) who are qualified to per-
10 form an allocation at the facility, as
11 determined by the Administrator; and

12 “(III) at least some of whom
13 maintain an office in the vicinity of
14 the facility.

15 “(D) PROPOSED ALLOCATOR.—A person
16 identified by the Administrator as a potentially
17 responsible party may propose an allocator not
18 on the list of neutral parties.

19 “(e) SELECTION OF ALLOCATOR.—

20 “(1) IN GENERAL.—As soon as practicable
21 after the receipt of a list under subsection (d)(5)(C),
22 the potentially responsible parties named on the list
23 shall—

1 “(A) select an individual to serve as allo-
2 cator by plurality vote on a per capita basis;
3 and

4 “(B) promptly notify the Administrator of
5 the selection.

6 “(2) VOTE BY REPRESENTATIVE.—The rep-
7 resentative of the Fund shall be entitled to cast 1
8 vote in an election under paragraph (1).

9 “(3) ELIGIBLE ALLOCATORS.—The potentially
10 responsible parties shall select an allocator under
11 paragraph (1) from among individuals—

12 “(A) named on the list of neutral parties
13 provided by the Administrator;

14 “(B) named on a list that is current on the
15 date of selection of neutrals maintained by the
16 American Arbitration Association, the Center
17 for Public Resources, or another nonprofit or
18 governmental organization of comparable stand-
19 ing; or

20 “(C) proposed by a party under subsection
21 (d)(5)(D).

22 “(4) UNQUALIFIED ALLOCATOR.—

23 “(A) IN GENERAL.—If the Administrator
24 determines that a person selected under para-
25 graph (1) is unqualified to serve, the Adminis-

1 trator shall promptly notify all potentially re-
2 sponsible parties for the facility, and the poten-
3 tially responsible parties shall make an alter-
4 native selection under paragraph (1).

5 “(B) LIMIT ON DETERMINATIONS.—The
6 Administrator may not make more than 2 de-
7 terminations that an allocator is unqualified
8 under this paragraph with respect to any facil-
9 ity.

10 “(5) DETERMINATION BY ADMINISTRATOR.—If
11 the Administrator does not receive notice of selection
12 of an allocator within 60 days after a copy of a list
13 is provided under subsection (d)(5)(C), or if the Ad-
14 ministrator, having given a notification under para-
15 graph (4), does not receive notice of an alternative
16 selection of an allocator under that paragraph within
17 60 days after the date of the notification, the Ad-
18 ministrator shall promptly select and designate a
19 person to serve as allocator.

20 “(6) JUDICIAL REVIEW.—No action under this
21 subsection shall be subject to judicial review.

22 “(f) RETENTION OF ALLOCATOR.—

23 “(1) IN GENERAL.—On selection of an allo-
24 cator, the Administrator shall promptly—

1 “(A) using the procurement procedures au-
 2 thorized by section 109(e), contract with the al-
 3 locator for the provision of allocation services in
 4 accordance with this section; and

5 “(B) notify each person named as a poten-
 6 tially responsible party at the facility that the
 7 allocator has been retained.

8 “(2) DISCRETION OF ALLOCATOR.—A contract
 9 with an allocator under paragraph (1) shall give the
 10 allocator broad discretion to conduct the allocation
 11 process in a fair, efficient, and impartial manner.

12 “(3) PROVISION OF INFORMATION.—

13 “(A) IN GENERAL.—Not later than 30
 14 days after the selection of an allocator, the Ad-
 15 ministrator shall make available to the allocator
 16 and to each person named as a potentially re-
 17 sponsible party for the facility—

18 “(i) any information or documents
 19 furnished under section 104(e)(2); and

20 “(ii) any other potentially relevant in-
 21 formation concerning the facility and the
 22 potentially responsible parties at the facil-
 23 ity.

24 “(B) PRIVILEGED INFORMATION.—The
 25 Administrator shall not make available any

1 privileged information, except as otherwise au-
2 thorized by law.

3 “(4) RECOVERY OF CONTRACT COSTS.—The
4 costs of the Administrator in retaining an allocator
5 under paragraph (1) shall be considered to be a re-
6 sponse cost for all purposes of this Act.

7 “(g) ADDITIONAL PARTIES.—

8 “(1) IN GENERAL.—Any person may propose to
9 the allocator the name of an additional potentially
10 responsible party at a facility, or otherwise provide
11 the allocator with information pertaining to a facility
12 or to an allocation, until the date that is 60 days
13 after the later of—

14 “(A) the date of issuance of the initial list
15 described in subsection (d)(5)(A); or

16 “(B) the date of retention of the allocator
17 under subsection (f)(1)(A).

18 “(2) NEXUS.—Any proposal under paragraph
19 (1) to add a potentially responsible party shall in-
20 clude all information reasonably available to the per-
21 son making the proposal regarding the nexus be-
22 tween the additional potentially responsible party
23 and the facility.

24 “(3) FINAL LIST.—

1 “(A) IN GENERAL.—The allocator shall
2 issue a final list of all parties that will be sub-
3 ject to the allocation process (referred to in this
4 section as the ‘allocation parties’) not later than
5 120 days after publication of the initial list
6 under subsection (d)(5)(A).

7 “(B) STANDARD.—The allocator shall in-
8 clude each party proposed under paragraph (1)
9 in the final list of allocation parties unless the
10 allocator determines that the party is not liable
11 under section 107.

12 “(C) IDENTIFICATION OF DE MINIMIS CON-
13 TRIBUTORS.—

14 “(i) IN GENERAL.—In compiling the
15 final list of allocation parties, the allocator
16 shall identify, to the extent possible, all
17 parties entitled to the de minimis contribu-
18 tor exemption under section 107(s) and
19 provide a list of the parties identified to
20 the Administrator.

21 “(ii) NOTIFICATION OF EXEMPTION.—
22 Not later than 60 days after receipt of the
23 list, the Administrator shall provide to
24 each party identified on the list a written
25 notification of the party’s entitlement to

1 the de minimis contributor exemption un-
2 less the Administrator publishes a written
3 determination that—

4 “(I) no rational interpretation of
5 the facts before the allocator supports
6 the allocator’s decision; or

7 “(II) the allocator’s decision was
8 directly and substantially affected by
9 bias, procedural error, fraud, or un-
10 lawful conduct.

11 “(iii) NO JUDICIAL REVIEW.—Any de-
12 termination by the Administrator under
13 this subparagraph shall not be subject to
14 judicial review.

15 “(D) EFFECT.—If the allocator determines
16 that there is an inadequate basis in law or fact
17 to conclude that a party is liable based on the
18 information presented by the nominating party
19 or otherwise available to the allocator, the nom-
20 inated party’s costs (including reasonable attor-
21 ney’s fees) shall be borne by the party that pro-
22 posed the addition of the party to the alloca-
23 tion.

24 “(h) FEDERAL, STATE, AND LOCAL AGENCIES.—

1 “(1) IN GENERAL.—Other than as set forth in
2 this Act, any Federal, State, or local governmental
3 department, agency, or instrumentality that is
4 named as a potentially responsible party or an allo-
5 cation party shall be subject to, and be entitled to
6 the benefits of, the allocation process and allocation
7 determination under this section to the same extent
8 as any other party.

9 “(2) ORPHAN SHARE.—The Administrator or
10 the Attorney General shall participate in the alloca-
11 tion proceeding as the representative of the Fund
12 from which any orphan share shall be paid.

13 “(i) POTENTIALLY RESPONSIBLE PARTY SETTLE-
14 MENT.—

15 “(1) SUBMISSION.—At any time prior to the
16 date of issuance of an allocation report under sub-
17 section (j)(6) or of a second or subsequent report
18 under subsection (q), any group of potentially re-
19 sponsible parties for a facility may submit to the al-
20 locator a private allocation for any response action
21 that is within the scope of the allocation under sub-
22 section (b)(6).

23 “(2) ADOPTION.—The allocator shall promptly
24 adopt a private allocation under paragraph (1) as
25 the allocation report if the private allocation—

1 “(A) is a binding allocation of 100 percent
2 of the recoverable costs of the response action
3 that is the subject of the allocation; and

4 “(B) does not allocate a share to—

5 “(i) any person who is not a signatory
6 to the private allocation; or

7 “(ii) any person whose share would be
8 part of the orphan share under subsection
9 (l), unless the representative of the Fund
10 is a signatory to the private allocation.

11 “(3) WAIVER OF RIGHTS.—Any signatory to a
12 private allocation waives the right to seek from any
13 other party for a facility—

14 “(A) recovery of any response cost that is
15 the subject of the allocation; and

16 “(B) contribution under this Act with re-
17 spect to any response action that is within the
18 scope of the allocation.

19 “(j) ALLOCATION DETERMINATION.—

20 “(1) ALLOCATION PROCESS.—An allocator re-
21 tained under subsection (f)(1) shall conduct an allo-
22 cation process culminating in the issuance of a writ-
23 ten report with a nonbinding equitable allocation of
24 percentage shares of responsibility for any response

1 action that is within the scope of the allocation
2 under subsection (b)(6).

3 “(2) IDENTIFICATION OF DE MINIMIS CONTRIB-
4 UTORS.—

5 “(A) IN GENERAL.—If all parties entitled
6 to the de minimis contributor exemption were
7 not previously identified under subsection
8 (g)(3)(C), the allocator’s report under para-
9 graph (1) shall identify all parties entitled to
10 the de minimis contributor exemption under
11 section 107(s).

12 “(B) PROCEDURE.—If a party is identified
13 under subparagraph (A), the Administrator
14 shall follow the procedural requirements of sub-
15 section (g)(3)(C)(ii).

16 “(2) COPIES OF REPORT.—An allocator shall
17 provide the report issued under paragraph (1) to the
18 Administrator and to the allocation parties.

19 “(3) INFORMATION-GATHERING AUTHORI-
20 TIES.—

21 “(A) IN GENERAL.—An allocator may re-
22 quest information from any person in order to
23 assist in the efficient completion of the alloca-
24 tion process.

1 “(B) REQUESTS.—Any person may request
2 that an allocator request information under this
3 paragraph.

4 “(C) AUTHORITY.—An allocator may exer-
5 cise the information-gathering authority of the
6 Administrator under section 104(e), including
7 issuing an administrative subpoena to compel
8 the production of a document or the appearance
9 of a witness.

10 “(D) DISCLOSURE.—Notwithstanding any
11 other law, any information submitted to the al-
12 locator in response to a subpoena issued under
13 paragraph (4) shall be exempt from disclosure
14 to any person under section 552 of title 5,
15 United States Code.

16 “(E) ORDERS.—In the event of contumacy
17 or a failure of a person to obey a subpoena is-
18 sued under paragraph (4), an allocator may re-
19 quest the Attorney General to—

20 “(i) bring a civil action to enforce the
21 subpoena; or

22 “(ii) if the person moves to quash the
23 subpoena, to defend the motion.

24 “(F) FAILURE OF ATTORNEY GENERAL TO
25 RESPOND.—If the Attorney General fails to

1 provide any response to the allocator within 30
2 days of a request for enforcement of a subpoena
3 or information request, the allocator may retain
4 counsel to commence a civil action to enforce
5 the subpoena or information request.

6 “(4) ADDITIONAL AUTHORITY.—An allocator
7 may—

8 “(A) schedule a meeting or hearing and re-
9 quire the attendance of allocation parties at the
10 meeting or hearing;

11 “(B) sanction an allocation party for fail-
12 ing to cooperate with the orderly conduct of the
13 allocation process;

14 “(C) require that allocation parties wishing
15 to present similar legal or factual positions con-
16 solidate the presentation of the positions;

17 “(D) obtain or employ support services, in-
18 cluding secretarial, clerical, computer support,
19 legal, and investigative services; and

20 “(E) take any other action necessary to
21 conduct a fair, efficient, and impartial alloca-
22 tion process.

23 “(5) CONDUCT OF ALLOCATION PROCESS.—

24 “(A) IN GENERAL.—The allocator shall
25 conduct the allocation process and render a de-

1 cision based solely on the provisions of this sec-
2 tion, including the allocation factors described
3 in subsection (k).

4 “(B) OPPORTUNITY TO BE HEARD.—Each
5 allocation party shall be afforded an oppor-
6 tunity to be heard (orally or in writing, at the
7 option of an allocation party) and an oppor-
8 tunity to comment on a draft allocation report.

9 “(C) RESPONSES.—The allocator shall not
10 be required to respond to comments.

11 “(D) STREAMLINING.—The allocator shall
12 make every effort to streamline the allocation
13 process and minimize the cost of conducting the
14 allocation.

15 “(6) ALLOCATION REPORT.—

16 “(A) DEADLINE.—

17 “(i) IN GENERAL.—The allocator shall
18 provide a written allocation report to the
19 Administrator and the allocation parties
20 not later than 180 days after the date of
21 issuance of the final list of allocation par-
22 ties under subsection (g)(3)(A) that speci-
23 fies the allocation share of each potentially
24 responsible party and any orphan shares,
25 as determined by the allocator.

1 “(ii) EXTENSION.—On request by the
2 allocator and for good cause shown, the
3 Administrator may extend the time to com-
4 plete the report by not more than 90 days.

5 “(B) BREAKDOWN OF ALLOCATION
6 SHARES INTO TIME PERIODS.—The allocation
7 share for each potentially responsible party with
8 respect to a mandatory allocation facility at
9 which 1 or more persons are liable or poten-
10 tially liable pursuant to section 107(a)(1) (C)
11 or (D) for conduct prior to December 11, 1980,
12 shall be comprised of percentage shares of re-
13 sponsibility stated separately for status or con-
14 duct prior to December 11, 1980, and status or
15 conduct on or after December 11, 1980.

16 “(k) EQUITABLE FACTORS FOR ALLOCATION.—The
17 allocator shall prepare a nonbinding allocation of percent-
18 age shares of responsibility to each allocation party and
19 to the orphan share, in accordance with this section and
20 without regard to any theory of joint and several liability,
21 based on—

22 “(1) the amount of hazardous substances con-
23 tributed by each allocation party;

24 “(2) the degree of toxicity of hazardous sub-
25 stances contributed by each allocation party;

1 “(3) the mobility of hazardous substances con-
2 tributed by each allocation party;

3 “(4) the degree of involvement of each alloca-
4 tion party in the generation, transportation, treat-
5 ment, storage, or disposal of hazardous substances;

6 “(5) the degree of care exercised by each alloca-
7 tion party with respect to hazardous substances, tak-
8 ing into account the characteristics of the hazardous
9 substances;

10 “(6) the cooperation of each allocation party in
11 contributing to any response action and in providing
12 complete and timely information to the allocator;
13 and

14 “(7) such other equitable factors as the allo-
15 cator determines are appropriate.

16 “(1) ORPHAN SHARES.—

17 “(1) IN GENERAL.—The allocator shall deter-
18 mine whether any percentage of responsibility for
19 the response action shall be allocable to the orphan
20 share.

21 “(2) MAKEUP OF ORPHAN SHARE.—The orphan
22 share shall consist of—

23 “(A) any share that the allocator deter-
24 mines is attributable to an allocation party that

1 is insolvent or defunct and that is not affiliated
2 with any financially viable allocation party;

3 “(B) any share that the allocator deter-
4 mines is attributable to an allocation party
5 (other than a department, agency, or instru-
6 mentality of the United States) at a vessel or
7 facility at which one or more persons is liable
8 or potentially liable pursuant to section
9 107(a)(1) (C) or (D) for status or conduct prior
10 to December 11, 1980, to the extent such allo-
11 cation party’s share is based on status or con-
12 duct prior to December 11, 1980; and

13 “(C) the difference between the aggregate
14 share that the allocator determines is attrib-
15 utable to a person and the aggregate share ac-
16 tually assumed by the person in a settlement
17 with the United States if—

18 “(i) the person is eligible for an expe-
19 dited settlement with the United States
20 under section 122 based on limited ability
21 to pay response costs;

22 “(ii) the liability of the person is
23 eliminated, limited, or reduced by any pro-
24 vision of this Act; or

1 “(iii) the person settled with the Unit-
2 ed States before the completion of the allo-
3 cation.

4 “(3) UNATTRIBUTABLE SHARES.—A share at-
5 tributable to a hazardous substance that the allo-
6 cator specifically determines was disposed at the site
7 prior to December 11, 1980, but which cannot be at-
8 tributed to any identified and viable party shall be
9 considered an orphan share. All other unattributable
10 shares shall be distributed among the allocation par-
11 ties and the orphan share in accordance with the al-
12 located share assigned to each.

13 “(m) INFORMATION REQUESTS.—

14 “(1) DUTY TO ANSWER.—Each person that re-
15 ceives an information request or subpoena from the
16 allocator shall provide a full and timely response to
17 the request.

18 “(2) CERTIFICATION.—An answer to an infor-
19 mation request by an allocator shall include a certifi-
20 cation by a representative that meets the criteria es-
21 tablished in section 270.11(a) of title 40, Code of
22 Federal Regulations (or any successor regulation),
23 that—

24 “(A) the answer is correct to the best of
25 the representative’s knowledge;

1 “(B) the answer is based on a diligent
2 good faith search of records in the possession or
3 control of the person to whom the request was
4 directed;

5 “(C) the answer is based on a reasonable
6 inquiry of the current (as of the date of the an-
7 swer) officers, directors, employees, and agents
8 of the person to whom the request was directed;

9 “(D) the answer accurately reflects infor-
10 mation obtained in the course of conducting the
11 search and the inquiry;

12 “(E) the person executing the certification
13 understands that there is a duty to supplement
14 any answer if, during the allocation process,
15 any significant additional, new, or different in-
16 formation becomes known or available to the
17 person; and

18 “(F) the person executing the certification
19 understands that there are significant penalties
20 for submitting false information, including the
21 possibility of a fine or imprisonment for a
22 knowing violation.

23 “(n) PENALTIES.—

24 “(1) CIVIL.—

1 “(A) IN GENERAL.—A person that fails to
2 submit a complete and timely answer to an in-
3 formation request, a request for the production
4 of a document, or a summons from an allo-
5 cator, submits a response that lacks the certifi-
6 cation required under subsection (m)(2), or
7 knowingly makes a false or misleading material
8 statement or representation in any statement,
9 submission, or testimony during the allocation
10 process (including a statement or representa-
11 tion in connection with the nomination of an-
12 other potentially responsible party) shall be sub-
13 ject to a civil penalty of not more than \$10,000
14 per day of violation.

15 “(B) ASSESSMENT OF PENALTY.—A pen-
16 alty may be assessed by the Administrator in
17 accordance with section 109 or by any alloca-
18 tion party in a citizen suit brought under sec-
19 tion 310.

20 “(2) CRIMINAL.—A person that knowingly and
21 willfully makes a false material statement or rep-
22 resentation in the response to an information re-
23 quest or subpoena issued by the allocator under sub-
24 section (m) shall be considered to have made a false
25 statement on a matter within the jurisdiction of the

1 United States within the meaning of section 1001 of
2 title 18, United States Code.

3 “(o) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

4 “(1) DOCUMENT REPOSITORY.—

5 “(A) IN GENERAL.—The allocator shall es-
6 tablish and maintain a document repository
7 containing copies of all documents and informa-
8 tion provided by the Administrator or any allo-
9 cation party under this section or generated by
10 the allocator during the allocation process.

11 “(B) AVAILABILITY.—Subject to para-
12 graph (2), the documents and information in
13 the document repository shall be available only
14 to an allocation party for review and copying at
15 the expense of the allocation party.

16 “(2) CONFIDENTIALITY.—

17 “(A) IN GENERAL.—Each document or
18 material submitted to the allocator or placed in
19 the document repository and the record of any
20 information generated or obtained during the
21 allocation process shall be confidential.

22 “(B) MAINTENANCE.—The allocator, each
23 allocation party, the Administrator, and the At-
24 torney General—

1 “(i) shall maintain the documents,
2 materials, and records of any depositions
3 or testimony adduced during the allocation
4 as confidential; and

5 “(ii) shall not use any such document
6 or material or the record in any other mat-
7 ter or proceeding or for any purpose other
8 than the allocation process.

9 “(C) DISCLOSURE.—Notwithstanding any
10 other law, the documents and materials and the
11 record shall not be subject to disclosure to any
12 person under section 552 of title 5, United
13 States Code.

14 “(D) DISCOVERY AND ADMISSIBILITY.—

15 “(i) IN GENERAL.—Subject to clause
16 (ii), the documents and materials and the
17 record shall not be subject to discovery or
18 admissible in any other Federal, State, or
19 local judicial or administrative proceeding,
20 except—

21 “(I) a new allocation under sub-
22 section (q) or (v) for the same re-
23 sponse action; or

1 “(II) an initial allocation under
2 this section for a different response
3 action at the same facility.

4 “(ii) OTHERWISE DISCOVERABLE OR
5 ADMISSIBLE.—

6 “(I) DOCUMENT OR MATERIAL.—

7 If the original of any document or
8 material submitted to the allocator or
9 placed in the document repository was
10 otherwise discoverable or admissible
11 from a party, the original document,
12 if subsequently sought from the party,
13 shall remain discoverable or admissi-
14 ble.

15 “(II) FACTS.—If a fact gen-
16 erated or obtained during the alloca-
17 tion was otherwise discoverable or ad-
18 missible from a witness, testimony
19 concerning the fact, if subsequently
20 sought from the witness, shall remain
21 discoverable or admissible.

22 “(3) NO WAIVER OF PRIVILEGE.—The submis-
23 sion of testimony, a document, or information under
24 the allocation process shall not constitute a waiver of
25 any privilege applicable to the testimony, document,

1 or information under any Federal or State law or
2 rule of discovery or evidence.

3 “(4) PROCEDURE IF DISCLOSURE SOUGHT.—

4 “(A) NOTICE.—A person that receives a
5 request for a statement, document, or material
6 submitted for the record of an allocation pro-
7 ceeding, shall—

8 “(i) promptly notify the person that
9 originally submitted the item or testified in
10 the allocation proceeding; and

11 “(ii) provide the person that originally
12 submitted the item or testified in the allo-
13 cation proceeding an opportunity to assert
14 and defend the confidentiality of the item
15 or testimony.

16 “(B) RELEASE.—No person may release or
17 provide a copy of a statement, document, or
18 material submitted, or the record of an alloca-
19 tion proceeding, to any person not a party to
20 the allocation except—

21 “(i) with the written consent of the
22 person that originally submitted the item
23 or testified in the allocation proceeding; or

24 “(ii) as may be required by court
25 order.

1 “(5) CIVIL PENALTY.—

2 “(A) IN GENERAL.—A person that fails to
3 maintain the confidentiality of any statement,
4 document, or material or the record generated
5 or obtained during an allocation proceeding, or
6 that releases any information in violation of this
7 section, shall be subject to a civil penalty of not
8 more than \$25,000 per violation.

9 “(B) ASSESSMENT OF PENALTY.—A pen-
10 alty may be assessed by the Administrator in
11 accordance with section 109 or by any alloca-
12 tion party in a citizen suit brought under sec-
13 tion 310.

14 “(C) DEFENSES.—In any administrative
15 or judicial proceeding, it shall be a complete de-
16 fense that any statement, document, or material
17 or the record at issue under subparagraph
18 (A)—

19 “(i) was in, or subsequently became
20 part of, the public domain, and did not be-
21 come part of the public domain as a result
22 of a violation of this subsection by the per-
23 son charged with the violation;

24 “(ii) was already known by lawful
25 means to the person receiving the informa-

tion in connection with the allocation process; or

“(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

“(p) REJECTION OF ALLOCATION REPORT.—

“(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

“(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

“(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

“(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180

1 days after the date on which the United States ac-
2 cepts a settlement offer (excluding an expedited set-
3 tlement under section 122) based on the allocation.

4 “(3) JUDICIAL REVIEW.—Any determination by
5 the Administrator or the Attorney General under
6 this subsection shall not be subject to judicial review
7 unless 2 successive allocation reports relating to the
8 same response action are rejected, in which case any
9 allocation party may obtain judicial review of the
10 second rejection in a United States district court
11 under subchapter II of chapter 5 of part I of title
12 5, United States Code.

13 “(4) DELEGATION.—The authority to make a
14 determination under this subsection may not be dele-
15 gated to any officer or employee below the level of
16 an Assistant Administrator or Acting Assistant Ad-
17 ministrator or an Assistant Attorney General or Act-
18 ing Assistant Attorney General with authority for
19 implementing this Act.

20 “(q) SECOND AND SUBSEQUENT ALLOCATIONS.—

21 “(1) IN GENERAL.—If a report is rejected
22 under subsection (p), the allocation parties shall se-
23 lect an allocator under subsection (e) to perform, on
24 an expedited basis, a new allocation based on the
25 same record available to the previous allocator.

1 “(2) MORATORIUM AND TOLLING.—The mora-
2 torium and tolling provisions of subsection (c) shall
3 be extended until the date that is 180 days after the
4 date of the issuance of any second or subsequent al-
5 location report under paragraph (1).

6 “(3) SAME ALLOCATOR.—The allocation parties
7 may select the same allocator who performed 1 or
8 more previous allocations at the facility, except that
9 the Administrator may determine under subsection
10 (e) that an allocator whose previous report at the
11 same facility has been rejected under subsection (p)
12 is unqualified to serve.

13 “(r) SETTLEMENTS BASED ON ALLOCATIONS.—

14 “(1) DEFINITION.—In this subsection, the term
15 ‘all settlements’ includes any orphan share allocated
16 under subsection (l).

17 “(2) IN GENERAL.—Unless an allocation report
18 is rejected under subsection (p), any allocation party
19 at a mandatory allocation facility (including an allo-
20 cation party whose allocated share is funded par-
21 tially or fully by orphan share funding under sub-
22 section (l)) shall be entitled to resolve the liability of
23 the party to the United States for response actions
24 subject to allocation if, not later than 90 days after

1 the date of issuance of a report by the allocator, the
2 party—

3 “(A) offers to settle with the United States
4 based on the percentage share specified by the
5 allocator; and

6 “(B) agrees to the other terms and condi-
7 tions stated in this subsection.

8 “(3) PROVISIONS OF SETTLEMENTS.—

9 “(A) IN GENERAL.—A settlement based on
10 an allocation under this section—

11 “(i) may consist of a cash-out settle-
12 ment or an agreement for the performance
13 of a response action; and

14 “(ii) shall include—

15 “(I) a waiver of contribution
16 rights against all persons that are po-
17 tentially responsible parties for any
18 response action addressed in the set-
19 tlement;

20 “(II) a covenant not to sue that
21 is consistent with section 122(f) and,
22 except in the case of a cash-out settle-
23 ment, provisions regarding perform-
24 ance or adequate assurance of per-
25 formance of the response action;

1 “(III) a premium, calculated on a
2 facility-specific basis and subject to
3 the limitations on premiums stated in
4 paragraph (5), that reflects the actual
5 risk to the United States of not col-
6 lecting unrecovered response costs for
7 the response action, despite the dili-
8 gent prosecution of litigation against
9 any viable allocation party that has
10 not resolved the liability of the party
11 to the United States, except that no
12 premium shall apply if all allocation
13 parties participate in the settlement
14 or if the settlement covers 100 per-
15 cent of the response costs subject to
16 the allocation;

17 “(IV) complete protection from
18 all claims for contribution regarding
19 the response action addressed in the
20 settlement; and

21 “(V) provisions through which a
22 settling party shall receive prompt re-
23 imbursement from the Fund under
24 subsection (s) of any response costs
25 incurred by the party for any response

1 action that is the subject of the alloca-
2 tion in excess of the allocated share of
3 the party, including the allocated por-
4 tion of any orphan share.

5 “(B) RIGHT TO REIMBURSEMENT.—A
6 right to reimbursement under subparagraph
7 (A)(ii)(V) shall not be contingent on recovery
8 by the United States of any response costs from
9 any person other than the settling party.

10 “(4) REPORT.—The Administrator shall report
11 annually to Congress on the administration of the
12 allocation process under this section, providing in
13 the report—

14 “(A) information comparing allocation re-
15 sults with actual settlements at multiparty fa-
16 cilities;

17 “(B) a cumulative analysis of response ac-
18 tion costs recovered through post-allocation liti-
19 gation or settlements of post-allocation litiga-
20 tion;

21 “(C) a description of any impediments to
22 achieving complete recovery; and

23 “(D) a complete accounting of the costs in-
24 curred in administering and participating in the
25 allocation process.

1 “(5) PREMIUM.—In each settlement under this
2 subsection, the premium authorized—

3 “(A) shall be determined on a case-by-case
4 basis to reflect the actual litigation risk faced
5 by the United States with respect to any re-
6 sponse action addressed in the settlement; but

7 “(B) shall not exceed—

8 “(i) 5 percent of the total costs as-
9 sumed by a settling party if all settlements
10 (including any orphan share) account for
11 more than 80 percent and less than 100
12 percent of responsibility for the response
13 action;

14 “(ii) 10 percent of the total costs as-
15 sumed by a settling party if all settlements
16 (including any orphan share) account for
17 more than 60 percent and not more than
18 80 percent of responsibility for the re-
19 sponse action;

20 “(iii) 15 percent of the total costs as-
21 sumed by a settling party if all settlements
22 (including any orphan share) account for
23 more than 40 percent and not more than
24 60 percent of responsibility for the re-
25 sponse action; or

1 “(iv) 20 percent of the total costs as-
 2 sumed by a settling party if all settlements
 3 (including any orphan share) account for
 4 40 percent or less of responsibility for the
 5 response; and

6 “(C) shall be reduced proportionally by the
 7 percentage of the allocated share for that party
 8 paid through orphan funding under subsection
 9 (l).

10 “(s) FUNDING OF ORPHAN SHARES.—

11 “(1) REIMBURSEMENT.—For each settlement
 12 agreement entered into under subsection (r), the Ad-
 13 ministrator shall promptly reimburse the allocation
 14 parties for any costs incurred that are attributable
 15 to the orphan share, as determined by the allocator.

16 “(2) ENTITLEMENT.—Paragraph (1) con-
 17 stitutes an entitlement to any allocation party eligi-
 18 ble to receive a reimbursement.

19 “(3) AMOUNTS OWED.—Any amount due and
 20 owing in excess of available appropriations in any
 21 fiscal year shall be paid from amounts made avail-
 22 able in subsequent fiscal years, along with interest
 23 on the unpaid balances at the rate equal to that of
 24 the current average market yield on outstanding

1 marketable obligations of the United States with a
2 maturity of 1 year.

3 “(4) DOCUMENTATION AND AUDITING.—The
4 Administrator—

5 “(A) shall require that any claim for reim-
6 bursement be supported by documentation of
7 actual costs incurred; and

8 “(B) may require an independent auditing
9 of any claim for reimbursement.

10 “(t) POST-ALLOCATION CONTRIBUTION.—

11 “(1) IN GENERAL.—Subject to paragraph (2),
12 an allocation party (including a party that is subject
13 to an order under section 106 or a settlement de-
14 cree) that incurs costs after the date of enactment
15 of this section for implementation of a response ac-
16 tion that is the subject of an allocation under this
17 section to an extent that exceeds the percentage
18 share of the allocation party, as determined by the
19 allocator, shall be entitled to prompt reimbursement
20 of the excess amount, including any orphan share,
21 from the Fund, unless the allocation report is re-
22 jected under subsection (p).

23 “(2) EXCEPTION.—No person whose allocated
24 share is fully funded by the orphan share pursuant
25 to subsection (l)(2)(B) shall be subject to an order

1 pursuant to section 106 issued after the date of en-
2 actment of this section.

3 “(3) NOT CONTINGENT.—The right to reim-
4 bursement under paragraph (1) shall not be contin-
5 gent on recovery by the United States of a response
6 cost from any other person.

7 “(4) TERMS AND CONDITIONS.—

8 “(A) RISK PREMIUM.—A reimbursement
9 shall be reduced by the amount of the litigation
10 risk premium under subsection (r)(5) that
11 would apply to a settlement by the allocation
12 party concerning the response action, based on
13 the total allocated shares of the parties that
14 have not reached a settlement with the United
15 States.

16 “(B) TIMING.—

17 “(i) IN GENERAL.—A reimbursement
18 shall be paid out during the course of the
19 response action that was the subject of the
20 allocation, using reasonable progress pay-
21 ments at significant milestones.

22 “(ii) CONSTRUCTION.—Reimburse-
23 ment for the construction portion of the
24 work shall be paid out not later than 120

1 days after the date of completion of the
2 construction.

3 “(C) EQUITABLE OFFSET.—A reimburse-
4 ment is subject to equitable offset or
5 recoupment by the Administrator at any time if
6 the allocation party fails to perform the work in
7 a proper and timely manner.

8 “(D) INDEPENDENT AUDITING.—The Ad-
9 ministrator may require independent auditing
10 of any claim for reimbursement.

11 “(E) WAIVER.—An allocation party seek-
12 ing reimbursement waives the right to seek re-
13 covery of response costs in connection with the
14 response action, or contribution toward the re-
15 sponse costs, from any other person.

16 “(F) BAR.—An administrative order shall
17 be in lieu of any action by the United States or
18 any other person against the allocation party
19 for recovery of response costs in connection
20 with the response action, or for contribution to-
21 ward the costs of the response action.

22 “(u) POST-SETTLEMENT LITIGATION.—

23 “(1) IN GENERAL.—Subject to subsections (q)
24 and (r), and on the expiration of the moratorium pe-
25 riod under subsection (c)(4), the Administrator may

1 commence an action under section 107 against an
2 allocation party that has not resolved the liability of
3 the party to the United States following allocation
4 and may seek to recover response costs not recovered
5 through settlements with other persons.

6 “(2) ORPHAN SHARE.—The recoverable costs
7 shall include any orphan share determined under
8 subsection (1), but shall not include any share allocated
9 to a Federal, State, or local governmental
10 agency, department, or instrumentality.

11 “(3) IMPLADER.—A defendant in an action
12 under paragraph (1) may implead an allocation
13 party only if the allocation party did not resolve liability
14 to the United States.

15 “(4) CERTIFICATION.—In commencing or maintaining
16 an action under section 107 against an allocation
17 party after the expiration of the moratorium
18 period under subsection (c)(4), the Attorney General
19 shall certify in the complaint that the defendant
20 failed to settle the matter based on the share that
21 the allocation report assigned to the party.

22 “(5) RESPONSE COSTS.—

23 “(A) ALLOCATION PROCEDURE.—The cost
24 of implementing the allocation procedure under
25 this section, including reasonable fees and ex-

penses of the allocator, shall be considered as a necessary response cost.

“(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

“(i) shall be considered as a necessary cost of response cost; and

“(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (r) or (t).

“(v) NEW INFORMATION.—

“(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

“(A) the allocator did not have information concerning—

“(i) 35 percent or more of the materials containing hazardous substances at the facility; or

1 “(ii) 1 or more persons not previously
2 named as an allocation party that contrib-
3 uted 15 percent or more of materials con-
4 taining hazardous substances at the facil-
5 ity; and

6 “(B) the information was discovered subse-
7 quent to the issuance of the report by the allo-
8 cator.

9 “(2) NEW ALLOCATION.—Any new allocation of
10 responsibility—

11 “(A) shall proceed in accordance with this
12 section;

13 “(B) shall be effective only after the date
14 of the new allocation report; and

15 “(C) shall not alter or affect the original
16 allocation with respect to any response costs
17 previously incurred.

18 “(w) ALLOCATOR’S DISCRETION.—The Adminis-
19 trator shall not issue any rule or order that limits the dis-
20 cretion of the allocator in the conduct of the allocation.

21 “(x) ILLEGAL ACTIVITIES.—Section 107 (n), (o), (p),
22 (q), (r), (s), (t), and (u), section 112(g), and (l)(2)(B)
23 shall not apply to any person whose liability for response
24 costs under section 107(a)(1) is otherwise based on any
25 act, omission, or status that is determined by a court or

1 administrative body of competent jurisdiction, within the
2 applicable statute of limitation, to have been a violation
3 of any Federal or State law pertaining to the treatment,
4 storage, disposal, or handling of hazardous substances if
5 the violation pertains to a hazardous substance, the re-
6 lease or threat of release of which caused the incurrence
7 of response costs at the vessel or facility.”.

8 **SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

9 (a) LIABILITY OF CONTRACTORS.—Section 101(20)
10 of the Comprehensive Environmental Response, Com-
11 pensation, and Liability Act of 1980 (42 U.S.C.
12 9601(20)), as amended by section 303(a), is amended by
13 adding at the end the following:

14 “(G) LIABILITY OF CONTRACTORS.—

15 “(i) IN GENERAL.—The term ‘owner
16 or operator’ does not include a response
17 action contractor (as defined in section
18 119(e)).

19 “(ii) LIABILITY LIMITATIONS.—A per-
20 son described in clause (i) shall not, in the
21 absence of negligence by the person, be
22 considered to—

23 “(I) cause or contribute to any
24 release or threatened release of a haz-

1 ardous substance, pollutant, or con-
2 taminant;

3 “(II) arrange for disposal or
4 treatment of a hazardous substance,
5 pollutant, or contaminant;

6 “(III) arrange with a transporter
7 for transport or disposal or treatment
8 of a hazardous substance, pollutant,
9 or contaminant; or

10 “(IV) transport a hazardous sub-
11 stance, pollutant, or contaminant.

12 “(iii) EXCEPTION.—This subpara-
13 graph does not apply to a person poten-
14 tially responsible under section 106 or 107
15 other than a person associated solely with
16 the provision of a response action or a
17 service or equipment ancillary to a re-
18 sponse action.”.

19 (b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—
20 Section 119(a) of the Comprehensive Environmental Re-
21 sponse, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9619(a)) is amended—

23 (1) in paragraph (1) by striking “title or under
24 any other Federal law” and inserting “title or under
25 any other Federal or State law”; and

1 (2) in paragraph (2)—

2 (A) by striking “(2) NEGLIGENCE, ETC.—
3 Paragraph (1)” and inserting the following:

4 “(2) NEGLIGENCE AND INTENTIONAL MIS-
5 CONDUCT; APPLICATION OF STATE LAW.—

6 “(A) NEGLIGENCE AND INTENTIONAL MIS-
7 CONDUCT.—

8 “(i) IN GENERAL.—Paragraph (1)”;
9 and

10 (B) by adding at the end the following:

11 “(ii) STANDARD.—Conduct under
12 clause (i) shall be evaluated based on the
13 generally accepted standards and practices
14 in effect at the time and place at which the
15 conduct occurred.

16 “(iii) PLAN.—An activity performed
17 in accordance with a plan that was ap-
18 proved by the Administrator shall not be
19 considered to constitute negligence under
20 clause (i).

21 “(B) APPLICATION OF STATE LAW.—Para-
22 graph (1) shall not apply in determining the li-
23 ability of a response action contractor under the
24 law of a State if the State has adopted by stat-

1 ute a law determining the liability of a response
2 action contractor.”.

3 (c) EXTENSION OF INDEMNIFICATION AUTHORITY.—
4 Section 119(c)(1) of the Comprehensive Environmental
5 Response, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9619(c)(1)) is amended by adding at the end the
7 following: “The agreement may apply to a claim for neg-
8 ligence arising under Federal or State law.”.

9 (d) INDEMNIFICATION DETERMINATIONS.—Section
10 119(c) of the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980 (42 U.S.C.
12 9619(c)) is amended by striking paragraph (4) and insert-
13 ing the following:

14 “(4) DECISION TO INDEMNIFY.—

15 “(A) IN GENERAL.—For each response ac-
16 tion contract for a vessel or facility, the Admin-
17 istrator shall make a decision whether to enter
18 into an indemnification agreement with a re-
19 sponse action contractor.

20 “(B) STANDARD.—The Administrator shall
21 enter into an indemnification agreement to the
22 extent that the potential liability (including the
23 risk of harm to public health, safety, environ-
24 ment, and property) involved in a response ac-
25 tion exceed or are not covered by insurance

1 available to the contractor at the time at which
2 the response action contract is entered into that
3 is likely to provide adequate long-term protec-
4 tion to the public for the potential liability on
5 fair and reasonable terms (including consider-
6 ation of premium, policy terms, and
7 deductibles).

8 “(C) DILIGENT EFFORTS.—The Adminis-
9 trator shall enter into an indemnification agree-
10 ment only if the Administrator determines that
11 the response action contractor has made dili-
12 gent efforts to obtain insurance coverage from
13 non-Federal sources to cover potential liabil-
14 ities.

15 “(D) CONTINUED DILIGENT EFFORTS.—
16 An indemnification agreement shall require the
17 response action contractor to continue, not
18 more frequently than annually, to make diligent
19 efforts to obtain insurance coverage from non-
20 Federal sources to cover potential liabilities.

21 “(E) LIMITATIONS ON INDEMNIFICA-
22 TION.—An indemnification agreement provided
23 under this subsection shall include deductibles
24 and shall place limits on the amount of indem-
25 nification made available in amounts deter-

1 mined by the contracting agency to be appro-
2 priate in light of the unique risk factors associ-
3 ated with the cleanup activity.”.

4 (e) INDEMNIFICATION FOR THREATENED RE-
5 LEASES.—Section 119(c)(5)(A) of the Comprehensive En-
6 vironmental Response, Compensation, and Liability Act of
7 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting
8 “or threatened release” after “release” each place it ap-
9 pears.

10 (f) EXTENSION OF COVERAGE TO ALL RESPONSE
11 ACTIONS.—Section 119(e)(1) of the Comprehensive Envi-
12 ronmental Response, Compensation, and Liability Act of
13 1980 (42 U.S.C. 9619(e)(1)) is amended—

14 (1) in subparagraph (D) by striking “carrying
15 out an agreement under section 106 or 122”; and

16 (2) in the matter following subparagraph (D)—

17 (A) by striking “any remedial action under
18 this Act at a facility listed on the National Pri-
19 orities List, or any removal under this Act,”
20 and inserting “any response action,”; and

21 (B) by inserting before the period at the
22 end the following: “or to undertake appropriate
23 action necessary to protect and restore any nat-
24 ural resource damaged by the release or threat-
25 ened release”.

1 (g) DEFINITION OF RESPONSE ACTION CONTRAC-
 2 TOR.—Section 119(e)(2)(A)(i) of the Comprehensive Envi-
 3 ronmental Response, Compensation, and Liability Act of
 4 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking
 5 “and is carrying out such contract” and inserting “cov-
 6 ered by this section and any person (including any sub-
 7 contractor) hired by a response action contractor”.

8 (h) SURETY BONDS.—Section 119 of the Comprehen-
 9 sive Environmental Response, Compensation, and Liabil-
 10 ity Act of 1980 (42 U.S.C. 9619) is amended—

11 (1) in subsection (e)(2)(C) by striking “, and
 12 before January 1, 1996,”; and

13 (2) in subsection (g)(5) by striking “, or after
 14 December 31, 1995”.

15 (i) NATIONAL UNIFORM STATUTE OF REPOSE.—Sec-
 16 tion 119 of the Comprehensive Environmental Response,
 17 Compensation, and Liability Act of 1980 (42 U.S.C.
 18 9619) is amended by adding at the end the following:

19 “(h) LIMITATION ON ACTIONS AGAINST RESPONSE
 20 ACTION CONTRACTORS.—

21 “(1) IN GENERAL.—No action may be brought
 22 as a result of the performance of services under a
 23 response contract against a response action contrac-
 24 tor after the date that is 7 years after the date of

1 completion of work at any facility under the contract
2 to recover—

3 “(A) injury to property, real or personal;

4 “(B) personal injury or wrongful death;

5 “(C) other expenses or costs arising out of
6 the performance of services under the contract;
7 or

8 “(D) contribution or indemnity for dam-
9 ages sustained as a result of an injury de-
10 scribed in subparagraphs (A) through (C).

11 “(2) EXCEPTION.—Paragraph (1) does not bar
12 recovery for a claim caused by the conduct of the re-
13 sponse action contractor that is grossly negligent or
14 that constitutes intentional misconduct.

15 “(3) INDEMNIFICATION.—This subsection does
16 not affect any right of indemnification that a re-
17 sponse action contractor may have under this section
18 or may acquire by contract with any person.

19 “(i) STATE STANDARDS OF REPOSE.—Subsections
20 (a)(1) and (h) shall not apply in determining the liability
21 of a response action contractor if the State has enacted
22 a statute of repose determining the liability of a response
23 action contractor.”.

1 **SEC. 505. RELEASE OF EVIDENCE.**

2 (a) TIMELY ACCESS TO INFORMATION FURNISHED
 3 UNDER SECTION 104(e).—Section 104(e)(7)(A) of the
 4 Comprehensive Environmental Response, Compensation,
 5 and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is
 6 amended by inserting after “shall be available to the pub-
 7 lic” the following: “not later than 14 days after the
 8 records, reports, or information is obtained”.

9 (b) REQUIREMENT TO PROVIDE POTENTIALLY RE-
 10 SPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

11 (1) ABATEMENT ACTIONS.—Section 106(a) of
 12 the Comprehensive Environmental Response, Com-
 13 pensation, and Liability Act of 1980 (42 U.S.C.
 14 9606(a)) is amended—

15 (A) by striking “(a) In addition” and in-
 16 serting the following: “(a) ORDER.—”

17 “(1) IN GENERAL.—In addition”; and

18 (B) by adding at the end the following:

19 “(2) CONTENTS OF ORDER.—An order under
 20 paragraph (1) shall provide information concerning
 21 the evidence that indicates that each element of li-
 22 ability described in section 107(a)(1) (A), (B), (C),
 23 and (D), as applicable, is present.”.

24 (2) SETTLEMENTS.—Section 122(e)(1) of the
 25 Comprehensive Environmental Response, Compensa-
 26 tion, and Liability Act of 1980 (42 U.S.C.

1 9622(e)(1)) is amended by inserting after subpara-
2 graph (C) the following:

3 “(D) For each potentially responsible
4 party, the evidence that indicates that each ele-
5 ment of liability contained in section 107(a)(1)
6 (A), (B), (C), and (D), as applicable, is
7 present.”.

8 **SEC. 506. CONTRIBUTION PROTECTION.**

9 Section 113(f)(2) of the Comprehensive Environ-
10 mental Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-
12 tence by inserting “or cost recovery” after “contribution”.

13 **SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**
14 **ENTIFIC, AND EDUCATIONAL ORGANIZA-**
15 **TIONS AS OWNERS OR OPERATORS.**

16 (a) DEFINITION.—Section 101(20) of the Com-
17 prehensive Environmental Response, Compensation, and
18 Liability Act of 1980 (42 U.S.C. 9601(20)), as amended
19 by section 502(a), is amended by adding at the end the
20 following:

21 “(H) RELIGIOUS, CHARITABLE, SCI-
22 ENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—
23 The term ‘owner or operator’ includes an orga-
24 nization described in section 501(c)(3) of the
25 Internal Revenue Code of 1986 that is orga-

1 nized and operated exclusively for religious,
2 charitable, scientific, or educational purposes
3 and that holds legal or equitable title to a vessel
4 or facility.”.

5 (b) LIMITATION ON LIABILITY.—Section 107 of the
6 Comprehensive Environmental Response, Compensation,
7 and Liability Act of 1980 (42 U.S.C. 9607), as amended
8 by section 306(b), is amended by adding at the end the
9 following:

10 “(u) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND
11 EDUCATIONAL ORGANIZATIONS.—

12 “(1) LIMITATION ON LIABILITY.—Subject to
13 paragraph (2), if an organization described in sec-
14 tion 101(20)(I) holds legal or equitable title to a ves-
15 sel or facility as a result of a charitable gift that is
16 allowable as a deduction under section 170, 2055, or
17 2522 of the Internal Revenue Code of 1986 (deter-
18 mined without regard to dollar limitations), the li-
19 ability of the organization shall be limited to the
20 lesser of the fair market value of the vessel or facil-
21 ity or the actual proceeds of the sale of the vessel
22 or facility received by the organization.

23 “(2) CONDITIONS.—In order for an organiza-
24 tion described in section 101(20)(I) to be eligible for

1 the limited liability described in paragraph (1), the
2 organization shall—

3 “(A) provide full cooperation, assistance,
4 and vessel or facility access to persons author-
5 ized to conduct response actions at the vessel or
6 facility, including the cooperation and access
7 necessary for the installation, preservation of
8 integrity, operation, and maintenance of any
9 complete or partial response action at the vessel
10 or facility;

11 “(B) provide full cooperation and assist-
12 ance to the United States in identifying and lo-
13 cating persons who recently owned, operated, or
14 otherwise controlled activities at the vessel or
15 facility;

16 “(C) establish by a preponderance of the
17 evidence that all active disposal of hazardous
18 substances at the vessel or facility occurred be-
19 fore the organization acquired the vessel or fa-
20 cility; and

21 “(D) establish by a preponderance of the
22 evidence that the organization did not cause or
23 contribute to a release or threatened release of
24 hazardous substances at the vessel or facility.

1 “(3) LIMITATION.—Nothing in this subsection
2 affects the liability of a person other than a person
3 described in section 101(20)(G) that meets the con-
4 ditions specified in paragraph (2).”.

5 **SEC. 508. COMMON CARRIERS.**

6 Section 107(b)(3) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9607(b)(3)) is amended by striking “a
9 published tariff and acceptance” and inserting “a con-
10 tract”.

11 **SEC. 509. LIMITATION ON LIABILITY FOR RESPONSE COSTS.**

12 Section 107 of the Comprehensive Environmental Re-
13 sponse, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9607), as amended by section 505(b), is amended
15 by adding at the end the following:

16 “(v) LIMITATION ON LIABILITY OF RAILROAD OWN-
17 ERS.—Notwithstanding subsection (a)(1), a person that
18 does not impede the performance of a response action or
19 natural resource restoration shall not be liable under this
20 Act to the extent that liability is based solely on the status
21 of the person as a railroad owner or operator of a spur
22 track, including a spur track over land subject to an ease-
23 ment, to a facility that is owned or operated by a person
24 that is not affiliated with the railroad owner or operator,
25 if—

1 “(1) the spur track provides access to a main
 2 line or branch line track that is owned or operated
 3 by the railroad;

4 “(2) the spur track is 10 miles long or less; and

5 “(3) the railroad owner or operator does not
 6 cause or contribute to a release or threatened release
 7 at the spur track.”.

8 **TITLE VI—FEDERAL FACILITIES**

9 **SEC. 601. TRANSFER OF AUTHORITIES.**

10 Section 120 of the Comprehensive Environmental Re-
 11 sponse, Compensation, and Liability Act of 1980 (42
 12 U.S.C. 9620) is amended by striking subsection (g) and
 13 inserting the following:

14 “(g) TRANSFER OF AUTHORITIES.—

15 “(1) DEFINITIONS.—In this section:

16 “(A) INTERAGENCY AGREEMENT.—The
 17 term ‘interagency agreement’ means an inter-
 18 agency agreement under this section.

19 “(B) TRANSFER AGREEMENT.—The term
 20 ‘transfer agreement’ means a transfer agree-
 21 ment under paragraph (3).

22 “(C) TRANSFEREE STATE.—The term
 23 ‘transferee State’ means a State to which au-
 24 thorities have been transferred under a transfer
 25 agreement.

1 “(2) STATE APPLICATION FOR TRANSFER OF
2 AUTHORITIES.—A State may apply to the Adminis-
3 trator to exercise the authorities vested in the Ad-
4 ministrators under this Act at any facility located in
5 the State that is—

6 “(A) owned or operated by any depart-
7 ment, agency, or instrumentality of the United
8 States (including the executive, legislative, and
9 judicial branches of government); and

10 “(B) listed on the National Priorities List.

11 “(3) TRANSFER OF AUTHORITIES.—

12 “(A) DETERMINATIONS.—The Adminis-
13 trator shall enter into a transfer agreement to
14 transfer to a State the authorities described in
15 paragraph (2) if the Administrator determines
16 that—

17 “(i) the State has the ability to exer-
18 cise such authorities in accordance with
19 this Act, including adequate legal author-
20 ity, financial and personnel resources, or-
21 ganization, and expertise;

22 “(ii) the State has demonstrated expe-
23 rience in exercising similar authorities;

24 “(iii) the State has agreed to be
25 bound by all Federal requirements and

standards under section 129 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

“(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

“(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

“(i) shall incorporate the determinations of the Administrator under subparagraph (A); and

“(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes be-

1 tween the State and the Federal depart-
2 ment, agency, or instrumentality regarding
3 the selection of a remedial action for the
4 facility; and

5 “(iii) shall not impose on the trans-
6 feree State any term or condition other
7 than that the State meet the requirements
8 of subparagraph (A).

9 “(4) EFFECT OF TRANSFER.—

10 “(A) STATE AUTHORITIES.—A transferee
11 State—

12 “(i) shall not be deemed to be an
13 agent of the Administrator but shall exer-
14 cise the authorities transferred under a
15 transfer agreement in the name of the
16 State; and

17 “(ii) shall have exclusive authority to
18 exercise authorities that have been trans-
19 ferred.

20 “(B) EFFECT ON INTERAGENCY AGREE-
21 MENTS.—Nothing in this subsection shall re-
22 quire, authorize, or permit the modification or
23 revision of an interagency agreement covering a
24 facility with respect to which authorities have
25 been transferred to a State under a transfer

1 agreement (except for the substitution of the
2 transferee State for the Administrator in the
3 terms of the interagency agreement, including
4 terms stating obligations intended to preserve
5 the confidentiality of information) without the
6 written consent of the Governor of the State
7 and the head of the department, agency, or in-
8 strumentality.

9 “(5) SELECTED REMEDIAL ACTION.—The reme-
10 dial action selected for a facility under section 129
11 by a transferee State shall constitute the only reme-
12 dial action required to be conducted at the facility,
13 and the transferee State shall be precluded from en-
14 forcing any other remedial action requirement under
15 Federal or State law, except for—

16 “(A) any corrective action under the Solid
17 Waste Disposal Act (42 U.S.C. 6901 et seq.)
18 that was initiated prior to the date of enact-
19 ment of this subsection; and

20 “(B) any remedial action in excess of re-
21 medial action under section 129 that the State
22 selects in accordance with paragraph (10).

23 “(6) DEADLINE.—

24 “(A) IN GENERAL.—The Administrator
25 shall make a determination on an application by

1 a State under paragraph (2) not later than 120
2 days after the date on which the Administrator
3 receives the application.

4 “(B) FAILURE TO ACT.—If the Adminis-
5 trator does not issue a notice of approval or no-
6 tice of disapproval of an application within the
7 time period stated in subparagraph (A), the ap-
8 plication shall be deemed to have been granted.

9 “(7) RESUBMISSION OF APPLICATION.—

10 “(A) IN GENERAL.—If the Administrator
11 disapproves an application under paragraph (1),
12 the State may resubmit the application at any
13 time after receiving the notice of disapproval.

14 “(B) FAILURE TO ACT.—If the Adminis-
15 trator does not issue a notice of approval or no-
16 tice of disapproval of a resubmitted application
17 within the time period stated in paragraph
18 (6)(A), the resubmitted application shall be
19 deemed to have been granted.

20 “(8) JUDICIAL REVIEW.—A disapproval of a re-
21 submitted application shall be subject to judicial re-
22 view under section 113(b).

23 “(9) WITHDRAWAL OF AUTHORITIES.—The Ad-
24 ministrator may withdraw the authorities trans-
25 ferred under a transfer agreement in whole or in

1 part if the Administrator determines that the
2 State—

3 “(A) is exercising the authorities, in whole
4 or in part, in a manner that is inconsistent with
5 the requirements of this Act;

6 “(B) has violated the transfer agreement,
7 in whole or in part; or

8 “(C) no longer meets one of the require-
9 ments of paragraph (3).

10 “(10) STATE COST RESPONSIBILITY.—The
11 State may require a remedial action that exceeds the
12 remedial action selection requirements of section 121
13 if the State pays the incremental cost of implement-
14 ing that remedial action over the most cost-effective
15 remedial action that would result from the applica-
16 tion of section 129.

17 “(11) DISPUTE RESOLUTION AND ENFORCE-
18 MENT.—

19 “(A) DISPUTE RESOLUTION.—

20 “(i) FACILITIES COVERED BY BOTH A
21 TRANSFER AGREEMENT AND AN INTER-
22 AGENCY AGREEMENT.—In the case of a fa-
23 cility with respect to which there is both a
24 transfer agreement and an interagency
25 agreement, if the State does not concur in

1 the remedial action proposed for selection
2 by the Federal department, agency, or in-
3 strumentality, the Federal department,
4 agency, or instrumentality and the State
5 shall engage in the dispute resolution proc-
6 ess provided for in the interagency agree-
7 ment, except that the final level for resolu-
8 tion of the dispute shall be the head of the
9 Federal department, agency, or instrumen-
10 tality and the Governor of the State.

11 “(ii) FACILITIES COVERED BY A
12 TRANSFER AGREEMENT BUT NOT AN
13 INTERAGENCY AGREEMENT.—In the case
14 of a facility with respect to which there is
15 a transfer agreement but no interagency
16 agreement, if the State does not concur in
17 the remedial action proposed for selection
18 by the Federal department, agency, or in-
19 strumentality, the Federal department,
20 agency, or instrumentality and the State
21 shall engage in dispute resolution as pro-
22 vide in paragraph (3)(B)(ii) under which
23 the final level for resolution of the dispute
24 shall be the head of the Federal depart-

1 ment, agency, or instrumentality and the
2 Governor of the State.

3 “(iii) FAILURE TO RESOLVE.—If no
4 agreement is reached between the head of
5 the Federal department, agency, or instru-
6 mentality and the Governor in a dispute
7 resolution process under clause (i) or
8 (ii), the Governor of the State shall make
9 the final determination regarding selection
10 of a remedial action. To compel implemen-
11 tation of the State’s selected remedy, the
12 State must bring a civil action in United
13 States district court.

14 “(B) ENFORCEMENT.—

15 “(i) AUTHORITY; JURISDICTION.—An
16 interagency agreement with respect to
17 which there is a transfer agreement or an
18 order issued by a transferee State shall be
19 enforceable by a transferee State or by the
20 Federal department, agency, or instrumen-
21 tality that is a party to the interagency
22 agreement only in the United States dis-
23 trict court for the district in which the fa-
24 cility is located.

1 “(ii) REMEDIES.—The district court
2 shall—

3 “(I) enforce compliance with any
4 provision, standard, regulation, condi-
5 tion, requirement, order, or final de-
6 termination that has become effective
7 under the interagency agreement;

8 “(II) impose any appropriate civil
9 penalty provided for any violation of
10 an interagency agreement, not to ex-
11 ceed \$25,000 per day;

12 “(III) compel implementation of
13 the selected remedial action; and

14 “(IV) review a challenge by the
15 Federal department, agency, or in-
16 strumentality to the remedial action
17 selected by the State under this sec-
18 tion, in accordance with section
19 113(j).

20 “(12) COMMUNITY PARTICIPATION.—If, prior to
21 the date of enactment of this section, a Federal de-
22 partment, agency, or instrumentality had established
23 for a facility covered by a transfer agreement a facil-
24 ity-specific advisory board or other community-based
25 advisory group (designated as a ‘site-specific advi-

1 sory board’, a ‘restoration advisory board’, or other-
 2 wise), and the Administrator determines that the
 3 board or group is willing and able to perform the re-
 4 sponsibilities of a community response organization
 5 under section 117(e)(2), the board or group—

6 “(A) shall be considered to be a commu-
 7 nity response organization for the purposes of
 8 section 117 (e) (2), (3), (4), and (9), and (g)
 9 and sections 127 and 129; but

10 “(B) shall not be required to comply with,
 11 and shall not be considered to be a community
 12 response organization for the purposes of, sec-
 13 tion 117 (e) (1), (5), (6), (7), or (8) or (f).”.

14 **SEC. 602. LIMITATION ON CRIMINAL LIABILITY OF FED-**
 15 **ERAL OFFICERS, EMPLOYEES, AND AGENTS.**

16 Section 120 of the Comprehensive Environmental Re-
 17 sponse, Compensation, and Liability Act of 1980 (42
 18 U.S.C. 9620) is amended by adding at the end the follow-
 19 ing:

20 “(i) CRIMINAL LIABILITY.—Notwithstanding any
 21 other provision of this Act or any other law, an officer,
 22 employee, or agent of the United States shall not be held
 23 criminally liable for a failure to comply, in any fiscal year,
 24 with a requirement to take a response action at a facility
 25 that is owned or operated by a department, agency, or in-

1 strumentality of the United States, under this Act, the
2 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any
3 other Federal or State law unless—

4 “(1) the officer, employee, or agent has not
5 fully performed any direct responsibility or delegated
6 responsibility that the officer, employee, or agent
7 had under Executive Order 12088 (42 U.S.C. 4321
8 note) or any other delegation of authority to ensure
9 that a request for funds sufficient to take the re-
10 sponse action was included in the President’s budget
11 request under section 1105 of title 31, United States
12 Code, for that fiscal year; or

13 “(2) appropriated funds were available to pay
14 for the response action.”.

15 **SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
16 **TION AT FEDERAL FACILITIES.**

17 (a) IN GENERAL.—Section 311 of the Comprehensive
18 Environmental Response, Compensation, and Liability Act
19 of 1980 (42 U.S.C. 9660) is amended by adding at the
20 end the following:

21 “(h) FEDERAL FACILITIES.—

22 “(1) DESIGNATION.—The President may des-
23 ignate a facility that is owned or operated by any de-
24 partment, agency, or instrumentality of the United
25 States, and that is listed or proposed for listing on

1 the National Priorities List, to facilitate the re-
2 search, development, and application of innovative
3 technologies for remedial action at the facility.

4 “(2) USE OF FACILITIES.—

5 “(A) IN GENERAL.—A facility designated
6 under paragraph (1) shall be made available to
7 Federal departments and agencies, State de-
8 partments and agencies, and public and private
9 instrumentalities, to carry out activities de-
10 scribed in paragraph (1).

11 “(B) COORDINATION.—The Adminis-
12 trator—

13 “(i) shall coordinate the use of the fa-
14 cilities with the departments, agencies, and
15 instrumentalities of the United States; and

16 “(ii) may approve or deny the use of
17 a particular innovative technology for re-
18 medial action at any such facility.

19 “(3) CONSIDERATIONS.—

20 “(A) EVALUATION OF SCHEDULES AND
21 PENALTIES.—In considering whether to permit
22 the application of a particular innovative tech-
23 nology for remedial action at a facility des-
24 ignated under paragraph (1), the Administrator
25 shall evaluate the schedules and penalties appli-

1 cable to the facility under any agreement or
2 order entered into under section 120.

3 “(B) AMENDMENT OF AGREEMENT OR
4 ORDER.—If, after an evaluation under subpara-
5 graph (A), the Administrator determines that
6 there is a need to amend any agreement or
7 order entered into pursuant to section 120, the
8 Administrator shall comply with all provisions
9 of the agreement or order, respectively, relating
10 to the amendment of the agreement or order.”.

11 (b) REPORT TO CONGRESS.—Section 311(e) of Com-
12 prehensive Environmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

14 (1) by striking “At the time” and inserting the
15 following:

16 “(1) IN GENERAL.—At the time”; and

17 (2) by adding at the end the following:

18 “(2) ADDITIONAL INFORMATION.—A report
19 under paragraph (1) shall include information on the
20 use of facilities described in subsection (h)(1) for the
21 research, development, and application of innovative
22 technologies for remedial activity, as authorized
23 under subsection (h).”.

1 **SEC. 604. FEDERAL FACILITY LISTING.**

2 Section 120(h)(4)(C) of the Comprehensive Environ-
3 mental Response Compensation and Liability Act of 1980
4 (42 U.S.C. 9620(h)(4)(C)) is amended by adding at the
5 end the following:

6 “(v) On identification of parcels of
7 uncontaminated property under this paragraph, the
8 President may provide notice that the listing does
9 not include the identified uncontaminated parcels.”.

10 **SEC. 605. FEDERAL FACILITY LISTING DEFERRAL.**

11 Paragraph (3) of section 120(d) of the Comprehen-
12 sive Environmental Response, Compensation, and Liabil-
13 ity Act of 1980 (42 U.S.C. 9620(d)), as designated by
14 section 604, is amended by inserting after “persons” the
15 following: “, but an appropriate factor as referred to in
16 section 105(a)(8)(A) may include the extent to which the
17 Federal agency has arranged with the Administrator or
18 with a State to respond to the release or threatened re-
19 lease under other legal authority”.

20 **SEC. 606. TRANSFERS OF UNCONTAMINATED PROPERTY.**

21 Section 120(h)(4)(A) of the Comprehensive Environ-
22 mental Response, Compensation, and Liability Act of
23 1980 (42 U.S.C. 9620(h)(4)(A)) is amended in the first
24 sentence by striking “stored for one year or more,”.

1 **TITLE VII—NATURAL RESOURCE**
2 **DAMAGES**

3 **SEC. 701. RESTORATION OF NATURAL RESOURCES.**

4 (a) DEFINITIONS.—Section 101 of the Comprehen-
5 sive Environmental Response, Compensation, and Liabil-
6 ity Act of 1980 (42 U.S.C. 9601), as amended by section
7 504(b), is amended by adding at the end the following:

8 “(52) BASELINE.—The term ‘baseline’ means
9 the condition or conditions that would have existed
10 at a natural resource had a release of hazardous
11 substances not occurred.

12 “(53) COMPENSATORY RESTORATION.—The
13 term ‘compensatory restoration’ means the provision
14 of ecological services lost as a result of injury to or
15 destruction or loss of a natural resource from the
16 initial release giving rise to liability under section
17 107(a)(2)(C) until primary restoration has been
18 achieved with respect to those services.

19 “(54) ECOLOGICAL SERVICE.—The term ‘eco-
20 logical service’ means a physical or biological func-
21 tion performed by an ecological resource, including
22 the human uses of such a function.

23 “(55) PRIMARY RESTORATION.—The term ‘pri-
24 mary restoration’ means rehabilitation, natural re-
25 covery, or replacement of an injured, destroyed, or

1 lost natural resource, or acquisition of a substitute
2 or alternative natural resource, to reestablish the
3 baseline ecological service that the natural resource
4 would have provided in the absence of a release giving
5 rise to liability under section 107(a)(2)(C).

6 “(56) RESTORATION.—The term ‘restoration’
7 means primary restoration and compensatory restoration.”.

9 (b) LIABILITY FOR NATURAL RESOURCE DAMAGES.—
10

11 (1) AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response Compensation,
12 and Liability Act of 1980 (42 U.S.C. 9607(a)) is
13 amended—
14

15 (A) by inserting “IN GENERAL.—” after
16 “(a)”;

17 (B) by striking “Notwithstanding” and inserting the following:
18

19 “(1) PERSONS LIABLE.—Notwithstanding”;

20 (C) by redesignating paragraphs (1), (2),
21 (3), and (4) (as designated prior to the date of
22 enactment of this Act) as subparagraphs (A),
23 (B), (C), and (D), respectively, and adjusting
24 the margins accordingly;

1 (D) by striking “hazardous substance,
 2 shall be liable for—” and inserting the follow-
 3 ing: “hazardous substance,
 4 shall be liable for the costs and damages described
 5 in paragraph (2).

6 “(2) COSTS AND DAMAGES.—A person de-
 7 scribed in paragraph (1) shall be liable for—”;

8 (E) by striking subparagraph (C) of para-
 9 graph (2), as designated by subparagraph (D),
 10 and inserting the following:

11 “(C) damages for injury to, destruction of,
 12 or loss of the baseline ecological services of nat-
 13 ural resources, including the reasonable costs of
 14 assessing such injury, destruction, or loss
 15 caused by a release; and”;

16 (F) by striking “The amounts” and insert-
 17 ing the following:

18 “(3) INTEREST.—The amounts”; and

19 (G) in the first sentence of paragraph (3),
 20 as designated by subparagraph (F), by striking
 21 “subparagraphs (A) through (D)” and inserting
 22 “paragraph (2)”.

23 (2) CONFORMING AMENDMENTS.—Section 107
 24 of the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980 (42 U.S.C.
2 9607) is amended—

3 (A) in subsection (d)(3) by striking “the
4 provisions of paragraph (1), (2), (3), or (4) of
5 subsection (a) of this section” and inserting
6 “subsection (a)”;

7 (B) in subsection (f)(1) by striking “sub-
8 paragraph (C) of subsection (a)” each place it
9 appears and inserting “subsection (a)(2)(C)”.

10 (c) NATURAL RESOURCE DAMAGES.—Section 107(f)
11 of the Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C. 9607(f))
13 is amended—

14 (1) by inserting “NATURAL RESOURCE DAM-
15 AGES.—” after “(f)”;

16 (2) by striking “(1) NATURAL RESOURCES LI-
17 ABILITY.—In the case” and inserting the following:

18 “(1) LIABILITY.—

19 “(A) IN GENERAL.—In the case”;

20 (3) in paragraph (1)(A), as designated by para-
21 graph (2)—

22 (A) in the first sentence by inserting “the
23 baseline ecological services of” after “loss of”;

24 (B) in the third and fourth sentences, by
25 striking “to restore, replace, or acquire the

1 equivalent” each place it appears and inserting
2 “for restoration”;

3 (C) by inserting after the fourth sentence
4 the following: “Sums recovered by an Indian
5 tribe as trustee under this subsection shall be
6 available for use only for restoration of such
7 natural resources by the Indian tribe. A res-
8 toration conducted by the United States, a
9 State, or an Indian tribe shall proceed only if
10 it is technologically practicable, cost-effective,
11 and consistent with all known or anticipated re-
12 sponse actions at or near the facility.”; and

13 (D) by striking “The measure of damages
14 in any action” and all that follows through the
15 end of the paragraph and inserting the follow-
16 ing:

17 “(B) LIMITATIONS ON LIABILITY.—

18 “(i) MEASURE OF DAMAGES.—The
19 measure of damages in any action under
20 subsection (a)(2)(C) shall be limited to the
21 reasonable costs of restoration and of as-
22 sessing damages.

23 “(ii) NONUSE VALUES.—There shall
24 be no recovery under this Act for any im-
25 pairment of non-use values.

1 “(iii) NO DOUBLE RECOVERY.—A per-
2 son that obtains a recovery of damages, re-
3 sponse costs, assessment costs, or any
4 other costs under this Act for injury to, de-
5 struction of, or loss of a natural resource
6 caused by a release shall not be entitled to
7 recovery under or any other Federal or
8 State law for injury to or destruction or
9 loss of the natural resource caused by the
10 release.

11 “(iv) NO RETROACTIVE LIABILITY.—

12 “(I) COMPENSATORY RESTORA-
13 TION.—There shall be no recovery
14 from any person under this section for
15 the costs of compensatory restoration
16 for a natural resource injury, destruc-
17 tion, or loss that occurred prior to De-
18 cember 11, 1980.

19 “(II) PRIMARY RESTORATION.—

20 There shall be no recovery from any
21 person under this section for the costs
22 of primary restoration if the natural
23 resource injury, destruction, or loss
24 for which primary restoration is
25 sought and the release of the hazard-

1 ous substance from which the injury
2 resulted occurred wholly before De-
3 cember 11, 1980.

4 “(v) BURDEN OF PROOF ON THE
5 ISSUE OF THE DATE OF OCCURRENCE OF
6 A RELEASE.—The trustee for an injured,
7 destroyed, or lost natural resource bears
8 the burden of demonstrating that any
9 amount of costs of compensatory restora-
10 tion that the trustee seeks under this sec-
11 tion is to compensate for an injury, de-
12 struction, or loss (or portion of an injury,
13 destruction, or loss) that occurred on or
14 after December 11, 1980.”; and

15 (4) by adding at the end the following:

16 “(3) SELECTION OF RESTORATION METHOD.—
17 When selecting appropriate restoration measures, in-
18 cluding natural recovery, a trustee shall select the
19 most cost-effective method of achieving restoration.”.

20 **SEC. 702. ASSESSMENT OF DAMAGES.**

21 (a) DAMAGE ASSESSMENTS.—Section 107(f)(2) of
22 the Comprehensive Environmental Response, Compensa-
23 tion, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is
24 amended by striking subparagraph (C) and inserting the
25 following:

1 “(C) DAMAGE ASSESSMENT.—

2 “(i) REGULATION.—A natural re-
3 source damage assessment conducted for
4 the purposes of this Act made by a Fed-
5 eral, State, or tribal trustee shall be per-
6 formed, to the extent practicable, in ac-
7 cordance with—

8 “(I) the regulation issued under
9 section 301(c); and

10 “(II) generally accepted scientific
11 and technical standards and meth-
12 odologies to ensure the validity and
13 reliability of assessment results.

14 “(ii) FACILITY-SPECIFIC CONDITIONS
15 AND RESTORATION REQUIREMENTS.—In-
16 jury determination, restoration planning,
17 and quantification of restoration costs
18 shall, to the extent practicable, be based on
19 an assessment of facility-specific conditions
20 and restoration requirements.

21 “(iii) USE BY TRUSTEE.—A natural
22 resource damage assessment under clause
23 (i) may be used by a trustee as the basis
24 for a natural resource damage claim only
25 if the assessment demonstrates that the

1 hazardous substance release in question
2 caused the alleged natural resource injury.

3 “(iv) COST RECOVERY.—As part of a
4 trustee’s claim, a trustee may recover only
5 the reasonable damage assessment costs
6 that were incurred directly in relation to
7 the site-specific conditions and restoration
8 measures that are the subject of the natu-
9 ral resource damage action.”.

10 (b) REGULATIONS.—

11 (1) NEW REGULATIONS.—Section 301 of the
12 Comprehensive Environmental Response, Compensa-
13 tion, and Liability Act of 1980 (42 U.S.C. 9651) is
14 amended by striking subsection (c) and inserting the
15 following:

16 “(c) REGULATIONS FOR DAMAGE ASSESSMENTS.—

17 “(1) IN GENERAL.—The President, acting
18 through Federal officials designated by the National
19 Contingency Plan under section 107(f)(2), shall
20 issue a regulation for the assessment of restoration
21 damages and assessment costs for injury to, destruc-
22 tion of, or loss of natural resources resulting from
23 a release of a hazardous substance for the purposes
24 of this Act.

1 “(2) CONTENTS.—The regulation under para-
2 graph (1) shall—

3 “(A) specify protocols for conducting as-
4 sessments in individual cases to determine the
5 injury, destruction, or loss of baseline ecological
6 services of the environment;

7 “(B) identify the best available procedures
8 to determine damages for the reasonable cost of
9 restoration and assessment;

10 “(C) take into consideration the ability of
11 a natural resource to recover naturally and the
12 availability of replacement or alternative re-
13 sources; and

14 “(D) specify an appropriate mechanism for
15 the cooperative designation of a single lead de-
16 cisionmaking trustee at a site where more than
17 one Federal, State, or Indian tribe trustee in-
18 tends to conduct an assessment, which designa-
19 tion shall occur not later than 180 days after
20 the date of first notice to the responsible parties
21 that a natural resource damage assessment will
22 be made.

23 “(3) BIENNIAL REVIEW.—The regulation under
24 paragraph (1) shall be reviewed and revised as ap-
25 propriate every 2 years.”.

1 (2) INTERIM PROVISION.—Until such time as
2 the regulations issued pursuant to the amendment
3 made by paragraph (1) become effective, the regula-
4 tions issued under section 301(c) of the Comprehen-
5 sive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9651(c)) shall re-
7 main in effect and shall be applied, subject to chal-
8 lenge on any ground, in the same manner and to the
9 same extent as if this Act had not been enacted, ex-
10 cept to the extent that those regulations are incon-
11 sistent with this Act or an amendment made by this
12 Act.

13 **SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS**
14 **AND RESOURCE RESTORATION STANDARDS**
15 **AND ALTERNATIVES.**

16 (a) RESTORATION STANDARDS AND ALTER-
17 NATIVES.—Section 107(f) of the Comprehensive Environ-
18 mental Response, Compensation, and Liability Act of
19 1980 (42 U.S.C. 9607(f)), as amended by section
20 701(b)(4), is amended by adding at the end the following:

21 “(4) CONSISTENCY WITH RESPONSE AC-
22 TIONS.—A restoration standard or restoration alter-
23 native selected by a trustee for a facility listed or
24 proposed for listing on the National Priorities List
25 shall not be duplicative of or inconsistent with ac-

1 tions undertaken pursuant to section 104, 106, 121,
2 or 129.”.

3 (b) RESPONSE ACTIONS.—

4 (1) ABATEMENT ACTION.—Section 106(a) of
5 the Comprehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 (42 U.S.C.
7 9606(a)) is amended by adding at the end the fol-
8 lowing: “The President shall not take action under
9 this subsection except such action as is necessary to
10 protect the public health and the baseline ecological
11 services of the environment.”.

12 (2) LIMITATION ON DEGREE OF CLEANUP.—
13 Section 121(a) of the Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980
15 (42 U.S.C. 9621(a)), as amended by section 402(1),
16 is amended by adding at the end the following:

17 “(7) LIMITATION.—

18 “(A) IN GENERAL.—The Administrator
19 shall not select a remedial action under this sec-
20 tion that goes beyond the measures necessary to
21 protect human health and the environment and
22 restore the baseline ecological services of the en-
23 vironment.

24 “(B) CONSIDERATIONS.—In evaluating
25 and selecting remedial actions, the Adminis-

1 trator shall take into account the potential for
 2 injury to or destruction or loss of a natural re-
 3 source resulting from such actions.

4 “(C) NO LIABILITY.—No person shall be
 5 liable for injury to or destruction or loss of a
 6 natural resource resulting from a response ac-
 7 tion or remedial action selected by the Adminis-
 8 trator that is properly implemented without
 9 negligence or other improper performance on
 10 the part of a potentially responsible party or
 11 other person acting at the direction of a poten-
 12 tially responsible party.”.

13 **SEC. 704. MISCELLANEOUS AMENDMENTS.**

14 Section 113(f)(1) of the Comprehensive Environ-
 15 mental Response, Compensation, and Liability Act of
 16 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sen-
 17 tence by inserting “and natural resource damages” after
 18 “costs”.

19 **TITLE VIII—MISCELLANEOUS**

20 **SEC. 801. RESULT-ORIENTED CLEANUPS.**

21 (a) AMENDMENT.—Section 105(a) of the Com-
 22 prehensive Environmental Response, Compensation, and
 23 Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—
 24 (1) by striking “and” at the end of paragraph
 25 (9);

1 (2) by striking the period at the end of para-
2 graph (10) and inserting “; and”; and

3 (3) by inserting after paragraph (10) the fol-
4 lowing:

5 “(11) procedures for conducting response ac-
6 tions, including facility evaluations, remedial inves-
7 tigations, feasibility studies, remedial action plans,
8 remedial designs, and remedial actions, which proce-
9 dures shall—

10 “(A) use a results-oriented approach to
11 minimize the time required to conduct response
12 measures and reduce the potential for exposure
13 to the hazardous substances, pollutants, and
14 contaminants in an efficient, timely, and cost-
15 effective manner;

16 “(B) require, at a minimum, expedited fa-
17 cility evaluations and risk assessments, timely
18 negotiation of response action goals, a single
19 engineering study, streamlined oversight of re-
20 sponse actions, and consultation with interested
21 parties throughout the response action process;

22 “(C) be subject to the requirements of sec-
23 tions 117, 120, 121, and 129 in the same man-
24 ner and to the same degree as those sections
25 apply to response actions; and

1 “(D) be required to be used for each reme-
2 dial action conducted under this Act unless the
3 Administrator determines that their use would
4 not be cost-effective or result in the selection of
5 a response action that achieves the goals of pro-
6 tecting human health and the environment stat-
7 ed in section 121(a)(1)(B).”.

8 (b) AMENDMENT OF NATIONAL HAZARDOUS SUB-
9 STANCE RESPONSE PLAN.—Not later than 180 days after
10 the date of enactment of this Act, the Administrator, after
11 notice and opportunity for public comment, shall amend
12 the National Hazardous Substance Response Plan under
13 section 105(a) of the Comprehensive Environmental Re-
14 sponse, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9605(a)) to include the procedures required by the
16 amendment made by subsection (a).

17 **SEC. 802. NATIONAL PRIORITIES LIST.**

18 Section 105 of the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9605), as amended by section 408(a)(1)(B), is
21 amended by adding at the end the following:

22 “(i) NATIONAL PRIORITIES LIST.—

23 “(1) ADDITIONAL VESSELS AND FACILITIES.—

24 “(A) LIMITATION.—

1 “(i) IN GENERAL.—After the date of
2 the enactment of this subsection, the
3 President may add vessels and facilities to
4 the National Priorities List only in accord-
5 ance with the following schedule:

6 “(I) Not more than 30 vessels
7 and facilities in 1996.

8 “(II) Not more than 25 vessels
9 and facilities in 1997.

10 “(III) Not more than 20 vessels
11 and facilities in 1998.

12 “(IV) Not more than 20 vessels
13 and facilities in 1999.

14 “(V) Not more than 10 vessels
15 and facilities in 2000.

16 “(VI) Not more than 10 vessels
17 and facilities in 2001.

18 “(VII) Not more than 10 vessels
19 and facilities in 2002.

20 “(ii) RELISTING.—The relisting of a
21 vessel or facility under section
22 135(d)(5)(C)(ii) shall not be considered to
23 be an addition to the National Priorities
24 List for purposes of this subsection.

1 “(B) PRIORITIZATION.—The Adminis-
2 trator shall prioritize the vessels and facilities
3 added under subparagraph (A) on a national
4 basis in accordance with the threat to human
5 health and the environment presented by each
6 of the vessels and facilities, respectively.

7 “(C) STATE CONCURRENCE.—A vessel or
8 facility may be added to the National Priorities
9 List under subparagraph (A) only with the con-
10 currence of the State in which the vessel or fa-
11 cility is located.

12 “(2) SUNSET.—

13 “(A) NO ADDITIONAL VESSELS OR FACILI-
14 TIES.—The authority of the Administrator to
15 add vessels and facilities to the National Prior-
16 ities List shall expire on December 31, 2002.

17 “(B) LIMITATION ON ACTION BY THE AD-
18 MINISTRATOR.—At the completion of response
19 actions for all vessels and facilities on the Na-
20 tional Priorities List, the authority of the Ad-
21 ministrators under this Act shall be limited to—

22 “(i) providing a national emergency
23 response capability;

24 “(ii) conducting research and develop-
25 ment;

1 “(iii) providing technical assistance;
2 and
3 “(iv) conducting oversight of grants
4 and loans to the States.”.

5 **SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE**
6 **ACTIONS.**

7 Section 104(c)(1) of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9604(c)(1)) is amended—

10 (1) in subparagraph (C) by striking “consistent
11 with the remedial action to be taken” and inserting
12 “not inconsistent with any remedial action that has
13 been selected or is anticipated at the time of any re-
14 moval action at a facility.”;

15 (2) by striking “\$2,000,000” and inserting
16 “\$4,000,000”; and

17 (3) by striking “12 months” and inserting “2
18 years”.

19 **SEC. 804. REMEDIATION WASTE.**

20 (a) DEFINITIONS.—Section 1004 of the Solid Waste
21 Disposal Act (42 U.S.C. 6903) is amended by adding at
22 the end the following:

23 “(42) DEBRIS.—The term ‘debris’—

24 “(A) means—

1 “(i) a solid manufactured object ex-
2 ceeding a 60 millimeter particle size;

3 “(ii) plant or animal matter; and

4 “(iii) natural geologic material; but

5 “(B) does not include material that the
6 Administrator may exclude from the meaning of
7 the term by regulation.

8 “(43) IDENTIFIED CHARACTERISTIC WASTE.—

9 The term ‘identified characteristic waste’ means a
10 solid waste that has been identified as having the
11 characteristics of hazardous waste under section
12 3001.

13 “(44) LISTED WASTE.—The term ‘listed waste’
14 means a solid waste that has been listed as a haz-
15 ardous waste under section 3001.

16 “(45) MEDIA.—The term ‘media’ means ground
17 water, surface water, soil, and sediment.

18 “(46) REMEDIATION ACTIVITY.—The term ‘re-
19 mediation activity’ means the remediation, removal,
20 containment, or stabilization of—

21 “(A) solid waste that has been released to
22 the environment; or

23 “(B) media and debris that are contami-
24 nated as a result of a release.

1 “(47) REMEDIATION WASTE.—The term ‘reme-
2 diation waste’ means—

3 “(A) solid and hazardous waste that is
4 generated by a remediation activity; and

5 “(B) debris and media that are generated
6 by a remediation activity and contain a listed
7 waste or identified characteristic waste.

8 “(48) STATE VOLUNTARY REMEDIATION PRO-
9 GRAM.—The term ‘State voluntary remediation pro-
10 gram’ means a program established by a State that
11 permits a person to conduct remediation activity at
12 a facility under general guidance or guidelines with-
13 out being subject to a State order or consent agree-
14 ment specifically applicable to the person.”.

15 (b) IDENTIFICATION AND LISTING.—Section 3001 of
16 the Solid Waste Disposal Act (42 U.S.C. 6921) is amend-
17 ed by adding at the end the following:

18 “(j) REMEDIATION WASTE.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), a person that manages remediation waste
21 that is an identified characteristic waste or listed
22 waste or that contains an identified characteristic
23 waste or listed waste shall be subject to the require-
24 ments of this subtitle (including regulations issued
25 under this subtitle, including the regulation for cor-

1 rective action management units published in section
2 264.552, Code of Federal Regulations, and the regu-
3 lation for temporary units published in section
4 264.553, Code of Federal Regulations, or any suc-
5 cessor regulation).

6 “(2) EXCEPTIONS.—

7 “(A) REQUIREMENTS UNDER SECTION
8 3004.—Media and debris generated by a remedi-
9 ation activity that are identified characteristic
10 wastes or listed wastes or that contain an iden-
11 tified characteristic waste or a listed waste shall
12 not be subject to the requirements of section
13 3004 (d), (e), (f), (g), (j), (m), or (o).

14 “(B) PERMIT REQUIREMENTS.—No Fed-
15 eral, State, or local permit shall be required for
16 the treatment, storage, or disposal of remedi-
17 ation waste that is conducted entirely at the fa-
18 cility at which the remediation takes place.

19 “(3) REMEDIATION WASTE SUBJECT TO OR-
20 DERS, CONSENT AGREEMENTS, VOLUNTARY REMEDI-
21 ATION PROGRAMS, AND OTHER MECHANISMS.—

22 “(A) REQUIREMENTS NOT APPLICABLE.—
23 Notwithstanding paragraph (1), a person that
24 manages remediation waste that—

1 “(i) is identified characteristic waste
2 or listed waste or that contains an identi-
3 fied characteristic waste or listed waste;
4 and

5 “(ii) is subject to a Federal or State
6 order, Federal or State consent agreement,
7 a State voluntary remediation program, or
8 such other mechanism as the Adminis-
9 trator considers appropriate,

10 shall not be subject to the requirements of this sub-
11 title (including any regulation under this subsection)
12 unless the requirements are specified in the Federal
13 or State order, Federal or State consent agreement,
14 State voluntary cleanup program, or other mecha-
15 nism, as determined by the Administrator.

16 “(B) ENFORCEMENT.—Unless other en-
17 forcement procedures are specified in the order,
18 consent agreement, or other mechanism, a per-
19 son described in subparagraph (A) (except a
20 person that manages remediation waste under a
21 State voluntary remediation program) shall be
22 subject to enforcement of the requirements of
23 the order, consent agreement, or other mecha-
24 nism by use of enforcement procedures under
25 section 3008.”.

1 (c) REGULATION.—Not later than 180 days after the
 2 date of enactment of this Act, the Administrator shall
 3 issue a regulation implementing section 3001(j) of the
 4 Solid Waste Disposal Act, as added by subsection (b).

5 **TITLE IX—FUNDING**

6 **Subtitle A—General Provisions**

7 **SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE** 8 **FUND.**

9 Section 111(a) of the Comprehensive Environmental
 10 Response, Compensation, and Liability Act of 1980 (42
 11 U.S.C. 9611(a)) is amended in the first sentence by strik-
 12 ing “not more than \$8,500,000,000 for the 5-year period
 13 beginning on the date of enactment of the Superfund
 14 Amendments and Reauthorization Act of 1986, and not
 15 more than \$5,100,000,000 for the period commencing Oc-
 16 tober 1, 1991, and ending September 30, 1994” and in-
 17 serting “a total of \$8,500,000,000 for fiscal years 1996,
 18 1997, 1998, 1999, and 2000”.

19 **SEC. 902. ORPHAN SHARE FUNDING.**

20 Section 111(a) of the Comprehensive Environmental
 21 Response, Compensation, and Liability Act of 1980 (42
 22 U.S.C. 9611(a)), as amended by section 301(c), is amend-
 23 ed by inserting after paragraph (8) the following:

24 “(9) ORPHAN SHARE FUNDING.—Payment of
 25 orphan shares under section 132.”.

1 **SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERV-**
2 **ICES.**

3 Section 111 of the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9611) is amended by striking subsection (m) and
6 inserting the following:

7 “(m) HEALTH AUTHORITIES.—There are authorized
8 to be appropriated from the Fund to the Secretary of
9 Health and Human Services to be used for the purposes
10 of carrying out the activities described in subsection (c)(4)
11 and the activities described in section 104(i), \$50,000,000
12 for each of fiscal years 1996, 1997, 1998, 1999, and 2000.
13 Funds appropriated under this subsection for a fiscal year,
14 but not obligated by the end of the fiscal year, shall be
15 returned to the Fund.”.

16 **SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
17 **AND DEMONSTRATION PROGRAMS.**

18 Section 111 of the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9611) is amended by striking subsection (n) and
21 inserting the following:

22 “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,
23 AND DEMONSTRATION PROGRAMS.—

24 “(1) ALTERNATIVE OR INNOVATIVE TECH-
25 NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-
26 ONSTRATION PROGRAMS.—

1 “(A) LIMITATION.—For each of fiscal
2 years 1996, 1997, 1998, 1999, and 2000, not
3 more than \$20,000,000 of the amounts avail-
4 able in the Fund may be used for the purposes
5 of carrying out the applied research, develop-
6 ment, and demonstration program for alter-
7 native or innovative technologies and training
8 program authorized under section 311(b) other
9 than basic research.

10 “(B) CONTINUING AVAILABILITY.—Such
11 amounts shall remain available until expended.

12 “(2) HAZARDOUS SUBSTANCE RESEARCH, DEM-
13 ONSTRATION, AND TRAINING.—

14 “(A) LIMITATION.—For each of fiscal
15 years 1996, 1997, 1998, 1999, and 2000 not
16 more than \$20,000,000 of the amounts avail-
17 able in the Fund may be used for the purposes
18 of section 311(a).

19 “(B) FURTHER LIMITATION.—No more
20 than 10 percent of such amounts shall be used
21 for training under section 311(a) for any fiscal
22 year.

23 “(3) UNIVERSITY HAZARDOUS SUBSTANCE RE-
24 SEARCH CENTERS.—For each of fiscal years 1996,
25 1997, 1998, 1999, and 2000, not more than

1 \$5,000,000 of the amounts available in the Fund
2 may be used for the purposes of section 311(d).”.

3 **SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM**
4 **GENERAL REVENUES.**

5 Section 111(p) of the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9611(p)) is amended by striking paragraph (1) and
8 inserting the following:

9 “(1) AUTHORIZATION OF APPROPRIATIONS.—

10 “(A) IN GENERAL.—There are authorized
11 to be appropriated, out of any money in the
12 Treasury not otherwise appropriated, to the
13 Hazardous Substance Superfund—

14 “(i) for fiscal year 1996,
15 \$250,000,000;

16 “(ii) for fiscal year 1997,
17 \$250,000,000;

18 “(iii) for fiscal year 1998,
19 \$250,000,000;

20 “(iv) for fiscal year 1999,
21 \$250,000,000; and

22 “(v) for fiscal year 2000,
23 \$250,000,000.

24 “(B) ADDITIONAL AMOUNTS.—There is
25 authorized to be appropriated to the Hazardous

1 Substance Superfund for each such fiscal year
 2 an amount, in addition to the amount author-
 3 ized by subparagraph (A), equal to so much of
 4 the aggregate amount authorized to be appro-
 5 priated under this subsection and section
 6 9507(b) of the Internal Revenue Code of 1986
 7 as has not been appropriated before the begin-
 8 ning of the fiscal year.”.

9 **SEC. 906. ADDITIONAL LIMITATIONS.**

10 Section 111 of the Comprehensive Environmental Re-
 11 sponse, Compensation, and Liability Act of 1980 (42
 12 U.S.C. 9611) is amended by adding at the end the follow-
 13 ing:

14 “(q) QUALIFYING STATE VOLUNTARY RESPONSE
 15 PROGRAM.—For each of fiscal years 1996, 1997, 1998,
 16 1999, and 2000, not more than \$25,000,000 of the
 17 amounts available in the Fund may be used for the pur-
 18 poses of subsection (a)(7) (relating to qualifying State vol-
 19 untary response programs).

20 “(r) BROWNFIELD CLEANUP ASSISTANCE.—For
 21 each of fiscal years 1996 through 2000, not more than
 22 \$15,000,000 of the amounts available in the Fund may
 23 be used to carry out section 134(b).

24 “(s) COMMUNITY RESPONSE ORGANIZATION.—For
 25 the period commencing October 1, 1995, and ending Sep-

1 tember 30, 2000, not more than \$15,000,000 of the
 2 amounts available in the Fund may be used to make
 3 grants under section 117(f) (relating to Community Re-
 4 sponse Organizations).

5 “(t) RECOVERIES.—Effective beginning October 1,
 6 1995, any response cost recoveries collected by the United
 7 States under this Act shall be credited as offsetting collec-
 8 tions to the Superfund appropriations account.”.

9 **SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPON-**
 10 **SIBLE PARTIES.**

11 Section 111(a) of the Comprehensive Environmental
 12 Response, Compensation, and Liability Act of 1980 (42
 13 U.S.C. 9611(a)), as amended by section 902, is amended
 14 by inserting after paragraph (9) the following:

15 “(10) REIMBURSEMENT OF POTENTIALLY RE-
 16 SPONSIBLE PARTIES.—If—

17 “(A) a potentially responsible party and
 18 the Administrator enter into a settlement under
 19 this Act under which the Administrator is reim-
 20 bursed for the response costs of the Adminis-
 21 trator; and

22 “(B) the Administrator determines,
 23 through a Federal audit of response costs, that
 24 the costs for which the Administrator is reim-
 25 bursed—

1 “(i) are unallowable due to contractor
2 fraud;
3 “(ii) are unallowable under the Fed-
4 eral Acquisition Regulation; or
5 “(iii) should be adjusted due to rou-
6 tine contract and Environmental Protec-
7 tion Agency response cost audit proce-
8 dures,
9 a potentially responsible party may be reimbursed
10 for those costs.”.